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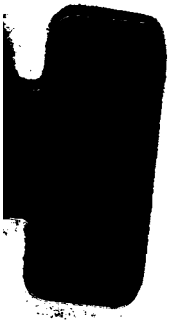

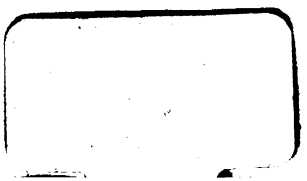

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THE

OFFICE AND DUTY

OF A

JUSTICE OF THE PEACE;

A GUIDE

TO SHERIFFS, CORONERS, CLERKS, CONSTABLES,

AND

OTHER CIVIL OFFICERS.

According to the Laws of North-Carolina.

WITH AN

APPENDIX,

Containing the Declaration of Rights and Constitution of this State, the Constitution of the United States, with the Amendments thereto; and a Collection of the most approved Forms.

BY HENRY POTTER,
Judge of the United States' District Courts of North-Carolina.

RALEIGH:
PRINTED BY AND FOR JOSEPH GALES.
1816.

United States of America.

District Court of North-Carolina, to-wit.

BE it remembered, that on the sixth day of December, in the forty-first year of the Independence of the United States of America, A. D. 1816, JOSEPH GALES of the said district, hath deposited in this Office the title of a Book, the right whereof he claims as Proprietor and Publisher, and also the right to the order and arrangement of the Work, to-wit,

"The Office and Duty of a Justice of the Peace, and a Guide to Sheriffs, Clerks, Constables and other Civil Officers: According to the Laws of North-Carolina. With an Appendix, containing the Declaration of Rights and Constitution of this State, the Constitution of the United States, with the Amendments thereto; and a Collection of the most approved Forms. By HENRY POTTER, Judge of the United States' District Courts of North-Carolina."

In conformity to the Act of Congress of the United States, entitled "An Act for the encouragement of learning, by securing the copies of maps, charts and books to the authors and proprietors of such copies during the times therein mentioned." And also to the Act, entitled, "An Act supplementary to an Act, entitled, An Act for the encouragement of learning, by securing the copies of maps, charts and books, to the authors and proprietors of such copies during the times therein mentioned, and extending the benefits thereof to the arts of designing, engraving and etching historical prints."

In testimony whereof, I WILLIAM H. HAYWOOD, Clerk of the Circuit Court in and for the district aforesaid, have caused the same to be signed with my name, and the seal of office to be hereto affixed, the day and date first above written. WM. H. HAYWOOD, *Clerk.*

PREFACE.

IN a free Representative Government, where there is a residue of Sovereign Power retained by the People, it is highly important to the safety and well-being of the State, that her citizens be rightly informed touching the Civil Polity, the Municipal Regulations, and the Administration of the Laws, under which they live, and by which they consent to be governed.

One of the means, and perhaps not the least, of diffusing this kind of knowledge, is to supply the Judicial and Ministerial Officers (particularly that class of useful citizens who bear the burden of deciding petty disputes without reward) with a Compend of the Law, and of the Forms by which it is administered.

The State of North-Carolina has been favoured with three very useful publications of this description; and from which much aid has been derived in the execution of the present design. But the first edition is out of print—the second very scarce—and the third, which appeared in the year 1800, was sold out, and afforded but a partial supply.

The increased population of the State—the augmentation of Justices of the Peace and other Civil Officers; and a growing thirst for useful knowledge, enhanced by the cultivation of Literature and Science, have greatly increased the demand for such information. And after a lapse of sixteen years, in the course of which the laws must have undergone many radical changes, as well by adjudged cases,

as by acts of the General Assembly, the call for a new edition of a JUSTICE must necessarily be great. To supply this general and increasing demand, is the object of the following Work.

Much care has been taken to render it useful, not only to Justices of the Peace, but also to Sheriffs, Coroners, Clerks, Constables and other Officers; and indeed to every citizen.

New and important heads are introduced; and the whole matter has been arranged with no small degree of attention to method and perspicuity.

The utility of correct Precedents, or Forms of Proceedings, must be manifest to every person. A general collection, therefore, of the most approved and useful Forms, is added by way of Appendix.

Raleigh, Dec. 2, 1816.

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JUSTICE OF THE PEACE.

ACCESSORIES.

AN accessory is he who is not the chief actor in the offence, nor present at its performance, but is some way concerned therein, either *before* or *after* the fact committed.

In high treason there are no accessories, but all are principals. The same acts that make a man accessory in felony, make him a principal in high treason, upon account of the heinousness of the crime.

In petit treason, murder, and felonies with or without benefit of clergy, there may be accessories: except only in those offences, which by judgment of law, are sudden and unpremeditated, as manslaughter and the like; which therefore cannot have any accessories *before* or *after* the fact. So, too, in petit larceny, and in all crimes under the degree of felony, there are no accessories either *before* or *after* the fact; but all persons concerned therein, if guilty at all, are principals: the same rule holding with regard to the highest and lowest offences, though upon different reasons.

An accessory cannot be guilty of a higher crime than his principal; being only punished, as a partaker of his guilt. So that if a servant instigates a stranger to kill his master, this being murder in the stranger as principal, of course the servant is accessory only to the crime of murder; though had he been present and assisting, he would have been guilty as principal of petit treason, and the stranger of murder.

An accessory before the fact, is one, who being absent at the time of the crime committed, doth yet procure, counsel, or command another to commit a crime. Herein absence is necessary to make an accessory; for, if such procurer, or the like, be present, he is guilty of the crime as principal. Whoever procureth a felony to be committed, though it be by the intervention of a third person, is an accessory before the fact. He who in anywise commands or counsels another to commit

for, it cannot appear whether any felony is committed or no, till the principal is attainted; and it might so happen, that the accessory should be convicted one day, and the principal acquitted the next, which would be absurd. Nor shall the accessory be constrained to answer his indictment till the principal be tried; but if he will waive that benefit, and put himself upon the trial before the principal be tried he may, and his acquittal or conviction upon such trial is good. But in such case the judgment must be respited till the principal be convicted and attaint, for if the principal be after acquitted, that conviction of the accessory is annulled, and no judgment ought to be given against him; but if he be acquitted of the accessory, that acquittal is good, and he shall be discharged.

The accessory may be indicted in the same indictment with the principal, and that is the best and most usual way; but he may be indicted in another indictment, but then such indictment must contain the certainty and kind of the principal felony.

If the principal be attainted and hath his clergy, or be pardoned after attainder, the accessory shall be put to answer; but if the principal be only convict and hath his clergy, or be pardoned, &c. the accessory shall not be put to answer, for the principal was never attainted—and in the latter case, if both principal and accessory after the fact be arraigned together, such accessory shall be discharged. If A be indicted as principal and B as accessory *before* or *after*, and both acquitted, yet B may be indicted as principal, and the former acquittal as accessory is no bar: but if A be indicted as principal and acquitted, he shall not be indicted as accessory *before*, for it is in substance the same offence; but in such case he may be indicted as accessory *after*, for they are offences of several kinds: and for the same reason, if he be indicted as accessory *before* and acquitted, he may be indicted as accessory *after*. The accessory shall be bailed till the principal appear.

The accessory may upon his trial, as well after as before the conviction of the principal, controvert the guilt of his supposed principal, and prove him innocent of the charge, either in point of fact or of law.

Now, by act of 1797, c. 19, it is lawful to prosecute and punish any accessory to felony, as for a misdemeanor; to be punished by a fine not exceeding fifty pounds, and corporal punishment not exceeding thirty-nine lashes, or standing in the pillory not exceeding two hours, although the principal be not before convicted of said felony, which shall exempt the

offender from being punished as accessory, if the principal shall be afterwards convicted.

ACCOMPLICES—See *Evidence.*

ADJOURNMENT.

If by any accident a sufficient number of justices do not meet for holding the court of pleas and quarter sessions on the day by law appointed, one justice may adjourn the court whereof he shall be a member, from day to day, not exceeding three days, until a sufficient number do attend.

ADMINISTRATOR—See *Executors and Administrators.*

ADULTERY—See *Vice and Immorality.*

AFFIRMATION—See *Oaths.*

AFFRAY.

Affray is the fighting of two or more persons in some public place to the terror of the citizens; for if the figting be in private, out of the hearing or seeing of any, except the parties concerned, it is no affray but an assault.

Though no bare words, in the judgment of the law, carry in them so much terror as to amount to an affray; yet in some cases there may be an affray where there is no actual violence; as where a man arms himself with dangerous and unusual weapons, in such a manner, as will naturally cause a terror to the people; which is said to have been always an offence at common law, and is strictly prohibited by many statutes.

Any one who sees others fighting, may lawfully part them, and also stay them till the heat be over, and then deliver them to the constable, who may carry them before a justice of the peace, in order to their finding sureties for the peace. Also, any private person may stop those whom he shall see coming to join either party; and, therefore, if a man receive a hurt from either party, in thus endeavoring to preserve the peace, he shall have his remedy by action against him; and if he unavoidably hurt either party, in thus doing what the law both allows and commands, he may well justify it.

If either party be dangerously wounded in such an affray, and a stander by, endeavoring to arrest the other, be not able to take him without hurting, or even wounding him, yet he is

no way liable to be punished for the same, because he is bound, under pain of fine and imprisonment, to arrest such an offender, and either detain him till it appear whether the party will live or die, or carry him before a justice of the peace, by whom he is either to be bailed or committed.

A constable is not only empowered, as all private persons are, to part an affray which happens in his presence, but is also bound at his peril to use his best endeavors to this purpose, and to demand the assistance of others, which if they refuse to give him, they are punishable with fine and imprisonment.

If a constable see persons, either actually engaged in an affray, as by striking or offering to strike, or drawing their weapons or the like, or upon the very point of entering upon an affray, as where one shall threaten to kill, wound, or beat another, he may either carry the offender before a justice of the peace, to the end that such justice may compel him to find sureties for the peace, or he may imprison him of his own authority for a reasonable time, till the heat shall be over; and may then perhaps also make him find sureties for the peace. But he has no power to imprison such offender in any other manner, or for any other purpose; for he cannot justify the committing the affrayer to jail till he shall be punished for his offence: and ought not to lay his hands on those, who barely contend with hot words, without any threats of personal hurt, and all that he can do in such case, is to command them under pain of imprisonment to avoid fighting.

If the affray be in a house, and the doors shut, the constable may break into the house to see the peace kept, though none of the parties have taken any hurt. And if the affrayers fly into another man's house, the constable (in fresh suit) may break into the house and apprehend the affrayers.

A constable hath no power to arrest a man for an affray done out of his own view, without a warrant from a justice of the peace, unless a felony were done or likely to be done; for it is the proper business of a constable to preserve the peace, not to punish the breach of it; nor does it follow from his having power to compel those to find sureties who break the peace in his presence, that he has the same power over those who break it in his absence; because, in the latter case, it is most proper to be done, by those who may examine the whole circumstances upon oath, which a constable cannot do; yet it is said he may carry those before a justice of the peace, who were arrested by such as were present at an affray, and delivered by them into his hands.

A justice of the peace may, and must, do all such things for the above purpose, which a private man or constable are either enabled, or required by the law to do. But he cannot without a warrant authorise the arrest of any person for an affray out of his view; but in such case he may make his warrant to bring the offender before him, in order to compel him to find sureties for the peace.

If one be dangerously wounded by another in an affray, a justice of the peace has a discretionary power, either to commit the offender, or to bail him, till the year and day be past; yet, he ought to be very cautious how he takes bail, if the wound be dangerous.

When a party to a common affray shall be arrested upon warrant, and brought before a justice of the peace, he may either be required to find sureties for the peace in such sum as the justice thinks proper, or to appear at the next county court; and if he refuses to be bound, or to give security, the justice may commit him. See *Warrants*, *Arrests*.

In general, all affrays are punished by fine and imprisonment, the measure of which is to be regulated according to the circumstances of the case, which very much vary the nature of this crime; so as in some cases to make it an offence of a very heinous nature. One aggravation of the offence is, where persons coolly and deliberately engage in a duel, though no mischief has actually ensued. Another aggravation is, where the officers of justice are violently disturbed in the due execution of their office; or where the affray is made in the presence of a court of justice. Another aggravation is, where the affray is made in a church or church-yard or other places dedicated to the worship of the Divine Majesty.

For Forms incident to this offence—see *Appendix*, title *Affrays*.

APPEALS.

An appeal is the removing of a cause from an inferior to a superior tribunal.

Either party may appeal from the judgment of a justice to the next court of pleas and quarter sessions of the county in which such judgment may be given, first giving sufficient security, to prosecute the same with effect. The acknowledgment of the security, subscribed with his or her proper hand-writing, and attested by the justice, shall be sufficient to bind

such security; and where judgment shall be against the appellant, the same shall be entered on motion against the security; and execution shall issue against the principal or against both principal and security, at the option of the plaintiff. All cases of appeal by the plaintiff shall be at the plaintiff's costs, unless the court, on the trial, shall be of opinion that there was sufficient cause for such appeal, and in such case the plaintiff shall recover his costs, on motion.

It is the duty of the justice to return such appeal on or before the second day of the court to which it may be returnable; and he is authorised and required, on application of either party, to issue subpœnas directed to the sheriff or other lawful officer, in any county in the state, for witnesses to appear and give testimony at the court to which such appeal is returnable; and the officers to whom such subpœnas shall be directed, and the witnesses summoned in consequence thereof, shall be under the same rules and regulations, and subject to the same penalties, and entitled to the same pay, privileges, and emoluments, as if such subpœna had issued from the clerk of the court to which such appeal shall be returnable.

If either party wishes to appeal, but is unprovided with securities on the day of trial, it is lawful for the justice to grant such person ten days to give approved securities for an appeal, and to make an entry thereof upon the warrant. The plaintiff is nevertheless at liberty, if judgment be for him, to take out execution at any time before an appeal be granted; but upon security being so given, such execution shall be returned to the justice who issued it and shall not be acted on by any officer; and the officer or other person who has any such execution shall, on due notice given to him in writing from the justice who granted the execution, deliver up the same, or be liable to the action of the party grieved.

If the justice does not return the appeal papers within the time limited, the proper course according to the practice of the courts, is to move the court, upon affidavit, for an order or rule on such justice to return the proceedings; which if he disobey, the court may proceed to enforce in like manner as other rules, by attachment for contempt.

The justice should not retain the paper which is evidence of the plaintiff's demand, or of the defendant's set off, unless they request it; but he should retain the warrant, the judgment, and the entry of the appeal and security, and return them to court.

See title *Recordari facias Loquelam.*

APPRENTICES.

Apprentices are a species of servants who are usually bound for a term of years, by indenture, to serve their masters, and be maintained and instructed by them.

No freeman or trader whatsoever, shall buy, sell, trade, barter, or borrow any commodities whatever, with, to or from any apprentice, whether by indenture, or otherwise, without the consent of the master or mistress of such apprentice, upon pain of forfeiting treble the value of such commodities, and of paying the sum of six pounds to the use of the said master or mistress, to be recovered by action of debt, bill, plaint, or information; and if the offender shall not be able to pay treble the value of such commodity and the sum of six pounds, the county court shall adjudge such person to be sold as a servant for the same.

If the master or mistress do not prosecute in ten months, any other person may and shall have and receive the advantage of such prosecution.

The father's disposing of the guardianship and tuition of his child, by will or by deed executed, shall not discharge any apprentice from his apprenticeship.

Where the estate of any orphan is of so small value that no person will educate or maintain him or her for the profits thereof, such orphan shall by direction of the court be bound apprentice; every male to some tradesman, mariner, or other person approved by the court, until he shall be of the age of twenty-one years, and every female to some suitable employment till the age of eighteen years; and such court may in like manner bind apprentice all free-born children of colour; and every such female child, being a mulatto or mustee, until she attain the age of twenty-one years. The master and mistress of every such apprentice shall find and provide for him or her diet, clothes, lodging, and accommodation fit and necessary, and shall teach or cause him or her to be taught to read and write; and, at the expiration of his or her apprenticeship, shall pay such apprentice three pounds besides one sufficient suit of wearing clothes; and on refusal shall be compelled thereto by petition in the county court, without the formal process of the action, who will give judgment with costs for the same. And if upon complaint made to the county court it shall appear that any such apprentice is ill used, or not taught the trade, profession, or employmemnt to which he or she was bound, it

shall be lawful for such court to remove and bind him or her to such other person or persons as they shall think fit.

The binding of such apprentice shall be by indenture, in the name of the presiding acting justice of the court and his successors, of the one part, and of the master or mistress, of the other; which indenture shall be acknowledged or proved before such court, and recorded, and a counter part thereof shall remain and be kept in the clerk's office for the benefit of such apprentice; and any person or persons injured, may and shall at his or her costs and charges, prosecute a suit thereon, in the name of such justice or his successors, and recover all damages which he or she may have sustained by reason of a breach of the covenants therein contained; and if any verdict or judgment shall pass for such master or mistress, he or she shall recover costs.

Also where any person shall desert his family, leaving them without sufficient support, and be absent from them for the term of one year; or where application may be made to the wardens for relief, and the said wardens shall certify the same to the court, the justices of the court of pleas and quarter sessions may, upon complaint made to them of any family being so deserted, bind out to proper and fit persons, the child or children which may be so left or deserted.

The master may by law, with moderation, chastise his apprentice.

If the apprentice be enticed to depart from his master's service, the master may have an action on the case for it.

An apprentice cannot be assigned, nor will he go to executors, upon the death of the master.

When any county court shall bind any orphan or base-born child of color, they are directed to take bond, with sufficient security, in the sum of 250*l.* from the master or mistress, that they shall not remove such child out of the county where he or she was bound; and to produce him or her before such court, at any time when the said court may require it, and also at the expiration of the time of service: and on failure thereof, the chairman of the court is required to bring suit on said bond, for the benefit of said apprentice. Provided nevertheless, that no seafaring person, being such master, shall incur this penalty, if he can make it appear that his said apprentice died on a voyage, without the limits of the county, or deserted from his service, so that he could not again procure him for the purpose of complying with the condition of the bond.

If any apprentice who shall be well used by his master, and who shall have received from his said master not less than six months' schooling, shall, after attaining the age of eighteen years, absent himself from his master's service before the term of his apprenticeship shall be expired, he shall at any time thereafter, whenever he shall be found, be compelled to make satisfaction to the master for the loss he shall have sustained by such absence; and in case he refuse to make such satisfaction, such master may recover by warrant before any justice of the peace such satisfaction, not exceeding thirty pounds, as said justice may adjudge: or such master may maintain his action on the case against such apprentice, and recover such damages as a jury may award in any court having cognizance thereof: Provided that the judgments so obtained before justices of the peace, shall be subject to the same right of appeal and stay of execution as other judgments given by them: Provided also, that no apprentice shall be compelled to make satisfaction to any master after the expiration of seven years, next after the end of the term for which he was bound.

ARREST.

Arrest is the apprehending or restraining one's person, in order to be forthcoming to answer an alleged or suspected crime.

In all criminal cases, all persons, without distinction, are equally liable to arrest.

No man is to be arrested, unless charged with such a crime as will at least justify holding him to bail when taken.

In general, an arrest may be made, 1st, by warrant; 2d, by an officer without a warrant; 3d, by a private person, also without warrant; 4th, by hue and cry.

A warrant is ordinarily granted by justices of peace. This they may do in cases where they have a jurisdiction over the offence, in order to compel the party accused to appear before them; for it would be absurd to give them power to examine and offender, unless they had also power to compel him to attend and submit to such examination; and this extends undoubtedly to all treasons, felonies, and breaches of the peace, and also to all such offences as they have power to punish by statute or act of assembly, and indeed to all criminal matters punishable by indictment.—See *H. P. c.* 84, § 15, 16.

A justice of the peace may issue his warrant to apprehend a person accused of felony, though not yet indicted; and also he may issue his warrant to apprehend a person suspected of felony, though the original suspicion be not in himself, but in the party that prays his warrant, because he is a competent judge of the probability offered to him of such suspicion.

But in both cases it is fitting to examine upon oath the party requiring a warrant, as well to ascertain that there is a felony or other crime actually committed, without which no warrant should be granted, as also to prove the cause or probability of suspecting the party against whom the warrant is prayed.

The warrant should be under the hand and seal of the justice; should set forth the time and place of making, and the cause for which it is made; and should be directed to the constable or other peace-officer, requiring him to bring the party either generally before any justice of the peace for the county, or only before the justice who granted it; the warrant in the latter case being called a special warrant. A general warrant to apprehend all persons suspected, without naming or particularly describing any person in special, is illegal and void for its uncertainty; for it is the duty of the magistrate, and should not be left to the officer to judge of the ground of suspicion. Such general warrants are expressly condemned by the constitution, in the words following—"General warrants, whereby any officer or magistrate may be commanded to search suspected places without evidence of the fact committed, or to seize any person or persons not named, whose offence is not particularly described and supported by evidence, are dangerous to liberty, and ought not to be granted."

And a warrant to apprehend all persons guilty of a crime therein specified, is no legal warrant; for the point upon which its authority rests is a fact to be decided on a subsequent trial, namely, whether the person apprehended thereupon be really guilty or not: It is therefore in fact no warrant at all, for it will not justify the officer who acts under it; whereas a lawful warrant, that is, one not defective in form and issued by a magistrate having jurisdiction in the case, will at all events indemnify the officer who executes the same ministerially. When a warrant is received by an officer, he is bound to execute it so far as the jurisdiction of himself and the magistrate extends.

Such precept or mandate or warrant, in the absence of, or for want of a constable, may be directed to any person not

being a party, who shall be obliged to execute it in the best manner he can, under the like penalty a constable is liable to for neglect.—*Act* 1741, c. 5, § 9.

A warrant from one of the judges extends all over the state, and is dated "North Carolina," not "Wake," or any particular county: but the the warrant of a justice of one county, must be signed by a justice of the peace in another, before it can be executed there; or more properly speaking, there ought to be a fresh warrant in every fresh county.

A constable sworn and known to be an officer publicly, need not show his warrant; but he and all others making an arrest, should acquaint the party with the substance thereof. But all private persons to whom the warrant is directed, and even officers if they be not sworn and commonly known, and even those if they act out of their proper limits, must show their warrant if demanded.

The sheriff may authorise others to execute it; but any other person to whom it is directed, must personally execute it, and any one may lawfully assist him.

An arrest in the night is good, both for the state and the citizen.

Any justice or the sheriff or constable may take of the county any number he thinks proper, to pursue, arrest, and imprison traitors, murderers, robbers, or felons; or such as do break or go about to break or disturb the peace; and every man being required, ought to assist and aid them on pain of fine and imprisonment.

Bare words will not make an arrest without laying hold of the person.—1 *Salk.* 79.

If a constable, after he has arrested the party by force of a warrant, suffer him to go at large, he cannot afterwards arrest him by force of the same warrant; but if the party return and put himself again in custody, he may be detained and brought before the justice in pursuance of such warrant.

Where an officer, in the execution of his office, in a civil or criminal case, kills a person that assaults and resists him; or where any officer or a private person attempts to take a man charged with felony, and is resisted, and in the endeavoring to take him, kills him, it is justifiable.

But in the latter case, the party killed should have notice, that he is pursued because a warrant is against him; 2d, the pursuer must be a lawful officer, or there must be a lawful warrant; 3d, it must be a case of necessity, namely, that the felon could not be otherwise taken.

Arrests by persons without warrant, may be executed by a justice of the peace, who may apprehend, or cause to be apprehended, by word only, any person committing a felony or breach of the peace in his presence; or by a sheriff, or by the coroner, who may apprehend any felon in the county without warrant; or by the constable, who may without warrant, arrest any one for a breach of the peace, and carry him before a justice of the peace; and in case of felony actually committed, or a dangerous wounding whereby felony is like to ensue, he may upon probable suspicion, arrest the felon, and for that purpose is authorised (as upon a justice's warrant) to break open doors, and even to kill the felon if he cannot otherwise be taken; and if he or his assistants be killed in attempting such arrest, it is murder in all concerned.

Upon a *capias* from the superior court, grounded on an indictment for any crime whatsoever, or from the county court, or upon a *capias* to compel a man to find sureties for the peace or good behaviour, or where one known to have committed a felony or treason, or to have given another a dangerous wound, is pursued, either with or without warrant, or whereupon a warrant for probable cause of suspicion of felony, if upon demand he will not surrender himself, or upon a warrant from a justice to find sureties for the peace or good behaviour, or where an affray is made in a house, or there be disorderly drinking or noise in a house at an unseasonable time of night, or where a party lawfully arrested escapes, it being first signified to those in the house what is the cause of his coming, and having requested admittance, doors may be broken open by the officer. So also if an officer to serve a warrant, enters into a house the doors being open, and then the doors are locked upon him, he may break them open to regain his liberty; or upon a *capias* for a fine, or upon the warrant of a justice for the levying a forfeiture, in execution of a judgment grounded on any statute or act of assembly, giving the whole or part of the forfeiture to the state, authorising the justice to give such judgment; or where a forcible entry and detainer is found by inquisition before justices or appears upon their view, or where those who have made an affray on the person of a constable fly to a house and are immediately pursued by him, and he is not suffered to enter in order to apprehend the affrayers.

Any private person, and much more so a peace officer, that is present when any felony is committed, is bound by the law to arrest the felon, on pain of fine and imprisonment if he

escapes through the negligence of the standers by; and they may justify breaking open doors upon following such felon; and if they kill him, provided he cannot otherwise be taken, it is justifiable; though if they are killed in endeavoring to make such arrest, it is murder. Upon probable suspicion also, a private person may arrest the felon, or other person so suspected, but he cannot justify breaking open doors to do it: and if either party kill the other in the attempt, it is manslaughter, and no more.

Arrests may be made on Sunday for treason, felony, riot, rescous, breach of the peace, or escape out of prison or custody. *Act* 1777, c. 8, § 6.

The warrant of a justice of the peace is not returnable at any particular time, but continues in force until it is fully executed and obeyed, though it be seven years, provided the justice lives so long.—*Peake's N. P.* 234.

For any crime or offence against the United States, any justice of the peace may issue his warrant against the offender in the usual mode, and cause him to be arrested, and imprisoned or bailed, the case may be, for trial before such court of the United States as shall have cognizance of the offence: but if the punishment be death, the justice has no authority to bail.—*Laws U. S.* vol. 1, p. 72.

ARREST by Hue and Cry—See *Hue and Cry.*

ARSON.

Maliciously and voluntarily burning the house of another, by night or by day, is felony at the common law; but if it be done by mischance or negligence, it is no felony.

Yet if a man maliciously intending only to burn one person's house, happens thereby to burn the house of another, he may be indicted as having maliciously burned the house of the other.

Neither a bare intention to burn a house, nor even an actual attempt to do it by putting fire to a part of a house will amount to felony, if no part of it be burned; but if any part of the house be burnt, the offender is guilty of felony, notwithstanding the fire afterwards be extinguished, or go out of itself.

Not only a mansion house, and the principal parts thereof, but also any other house and the out buildings, as barns and

stables adjoining thereto; and also barns full of corn, whether they be adjoining to any house or not, and stacks of corn, are so far secured by law, that the malicious burning of them is a capital felony at common law, both in the principal and the accessory before the fact.

A person seised in fee, or but possessed for years, of a house standing by itself at a distance from all others, cannot commit felony in burning the same. Neither is it felony for a man so seised or possessed of a house in a town, to burn his own with an intent to burn his neighbor's, but in the event burns only his own; but it is certainly an offence highly punishable, in regard of the malice thereof, and the great danger to the public which attends it; and the offender may be severely fined and imprisoned and set on the pillory and bound to his good behaviour.

If a landlord or reversioner sets fire to his own house of which another is in possession under a lease from himself or from those whose estate he hath, it is arson; for during the lease the house is the property of the tenant.

ASSAULT AND BATTERY.

Assault is an attempt or offer to beat another without touching him—as if one lift up his cane or fist in a threatening manner at another, or strikes at him but misses him, or presenting a gun at him at such a distance as the gun will carry, or pointing a pitch-fork at him standing within the reach of it.

Battery is the unlawful beating another. The least touching of another's person wilfully or in anger, is a battery; every man's person being sacred, and no other having a right to meddle with it in the slightest manner. A battery is in some cases justifiable, as where one who has authority, as a parent or master, gives moderate correction to his child, his scholar, or his apprentice. So also on the principle of self-defence; for if one strikes me first, or even assaults me, I may strike in my own defence. So likewise in defence of my goods or my possession, if a man endeavors to deprive me of them, I may lay hands upon him to prevent him; and if he persists with violence, I may proceed to beat him away.—Likewise if a person comes into my house and will not go out, I may lay hold of him and turn him out.

These are breaches of the peace, an affront to the government, and a damage to the citizens. They are indictable and

punishable by fine and imprisonment in the county court, or with other ignominious corporal punishment, where they are committed with any atrocious design, as in case of an assault with intent to murder, or to commit a rape, or the crime against nature; which latter species of assault should be prosecuted in the superior court. And herein, besides fine and imprisonment, it is usual to award judgment to the pillory.

ASSEMBLY—See *Elections, Members of Assembly.*

ATTACHMENTS.

Attachments are of two kinds. 1st, An attachment is a process from a court of record, awarded by the justices at their discretion, on a bare suggestion, or on their own knowledge; and is properly grantable in cases of *contempts*, against which all courts of record may proceed in a summary manner.—*Jac. Law. Dict.*

The most remarkable instances of contempts seem reducible to the following heads:—1st, Contempts of the state writs; 2d, contempts in the face of a court; 3d, contemptuous words or writing concerning the court; 4th, contempts of the rules or awards of the court: 5th, abuse of the process of the courts; 6th, forgeries of writs and other deceits tending to impose on the court.—2 *Hawk. P. C. c.* 22, § 33

If the contempt be committed in the face of the court, the offender may be instantly apprehended and imprisoned, at the discretion of the justices, without any farther proof or examination. But in matters that arise at a distance, and of which the court cannot have so perfect a knowledge, unless by the confession of the party, or the testimony of others, if the justices upon affidavit, see sufficient ground to suspect that a contempt has been committed, they either make a rule on the suspected party to show cause why an attachment should not issue against him, or in very flagrant instances of contempt, the attachment issues in the first instance, as it also does if no sufficient cause be shown to discharge; and thereupon the court confirms and makes absolute the original rule.—4 *Blac. Com.* 287.

This process of attachment is merely intended to bring the party into court; and when there, he must either stand committed or put inbail, in order to answer upon oath to such interrogatories as shall be administered to him for the bette-

information of the court, with respect to the circumstanses of the contempt.

2d, An attachment for a debt or demand may be issued by a justice of the peace, returnable before the county or superior court; or secondly, before himself or some other justice.

With respect to the first, upon complaint made on oath to any justice of the peace by any person or persons, his, her, or their attorney, agent, or factor, that any person hath removed, or is removing him or herself, out of the county privately, or so absconds or conceals him or herself that the ordinary process of law cannot be served on such debtor; and the complainant swearing to the amount of his, her, or their debt or demand, to the best of his, her, or their knowledge or belief, such justice shall grant an attachment against the estate of such debtor wherever the same may be found, or in the hands of any person or persons indebted to or having any of the effects of the defendant, of so much thereof as shall be sufficient to satisfy the debt or demand and costs; which attachment shall be returned to the court where the suit is cognizable, and shall be deemed the leading process in such action.

But the justice, before granting such attachment, shall take bond and security of the party for whom the same shall be issued, his, her, or their attorney, agent, or factor, payable to the defendant, in double the sum for which the complaint shall be made, conditioned for satisfying all costs which shall be awarded to such defendant in case the plaintiff shall be cast in the suit; and also all damages which shall be recovered against the plaintiff, in any suit or suits which may be brought against him for wrongfully suing out such attachment: which bond, together with the affidavit of the party complaining, subscribed with his proper name, shall be returned by the justice taking the same, to the court to which the attachment is returnable. And every attachment issued without bond and affidavit taken and returned as aforesaid, shall be abated on the plea of the defendant.

If the debtor reside in another government and the creditor reside in this state, the justice may grant an attachment against his estate in manner before mentioned.

When the estate attached shall, by three justices to be summoned by the sheriff for that purpose, be deemed perishable, and be so certified on oath, and shall not be replevied within sixty days after serving the attachment, it may be sold by the sheriff at public vendue, upon ten days notice, by advertisement at the court-house and other public places.

The Affidavit may be in this Form:

North-Carolina, County.

A. B. maketh oath before me C. D. one of the justices of the peace for the county of that E. F. is indebted to him [or to G. H. for whom the said, A. B. is attorney, agent, or factor, as the case may be] to the amount of , to the best of his knowledge or belief; and that the said E. F. hath removed himself out of this county [or is removing himself privately, or so absconds or conceals himself, as the case may be] that the ordinary process of law cannot be served on him.

A. B.

Sworn before me the day of
In the year of our Lord C. D.

The Attachment is in this Form:

The State of North-Carolina,

To the Sheriff of County, greeting;

Whereas, A. B. or [A. B. attorney, agent, or factor, as the case may be, of C. D.] hath complained, on oath, to Esq. justice of the superior courts of law, or of the county court of that E. F. is justly indebted to him [or the said A. B.] to the amount of , and oath having been also made that the said E. F. hath removed, or is about to remove himself out of your county, or so absconds or conceals himself that the ordinary process of law cannot be served on him, [or is an inhabitant of another government, if the case is so] and the said having given bond and security, according to the directions of the act of the General Assembly in such case made and provided. We therefore command you that you attach the estate of the said E. F. if to be found in your county, or so much thereof, repleviable on security, as shall be of value sufficient to satisfy the said debt and costs, according to the complaint; and such estate so attached, in your hands to secure, or so to provide that the same may be liable to further proceedings thereupon, to be had at the court to be held for of at on the day of next, so as to compel the said E. F. to appear and answer the above complaint of the said ; when and where you shall make known to the said court how you shall have executed this writ. Witness , Esq. justice of the said court, at the day of in the year of American Independence.

The Bond for the Attachment is in this Form:

Know all men, by these presents, that we , all of the county of are held and firmly bound unto in the sum of , to be paid to the said , his certain attorney, executors, administrators, or assigns. For which payment, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the day of , in the year of our Lord one thousand eight hundred and

The condition of the above obligation is such, that whereas the above bounden hath, the day of the date hereof, prayed an attachment, at the suit of , against the estate of the above named , for the sum of , and hath obtained the same, returnable to the court, to be held at on the day of next. Now if the said shall pro-

secute his said suit with effect, or, in case he fail therein, shall well and truly pay and satisfy to the said all such costs and damages as shall be awarded and recovered against the said , his heirs, executors, or administrators, in any suit or suits which may be hereafter brought for wrongfully suing out the said attachment; then the above obligation to be void, otherwise to remain in full force and effect.

Also for all debts and demands cognizable before a justice of the peace, that is to say, of thirty pounds and under, for a balance due on specialty, contract, note, or agreement or for goods, wares, and merchandize sold and delivered, or for work or labour done, or for specific articles, whether due by obligation, note, or assumpsit, a justice of the peace, upon the like complaint and the like bond given as is above mentioned, by the like persons as are there also mentioned, may issue an attachment to the same officer; which shall be returnable before some justice of the peace on or before thirty days after the date thereof. Such bond, together with the affidavit to be filed by the justice who shall try the cause, with the attachment and other papers relative thereto. And upon such attachment, proceedings shall be had in a summary way, and the defendant may replevy the property so attached, by giving bond and security to the officer serving such attachment, conditioned to appear before some justice of the peace to abide by and perform the order or judgment that shall be made thereon.

Where the sheriff, constable, or other officer shall serve an attachment in the hands of any person or persons supposed to be indebted to, or supposed to have any of the effects of the party or parties absconding or residing out of the state, he shall at the same time summon such person as garnishee, in writing, to appear before the justice before whom the attachment shall be returned, then to answer on oath relative to what he or she is indebted to the defendant, and what effects of the defendant he or she hath in his or her hands, and had at the time of serving such attachment, and what effects or debts of the defendant there are in the hands of any other person, and what person, to his or their knowledge or belief: And where any attachment shall be served in the hands of any garnishee in manner aforesaid, it shall be lawful upon his, her, or their appearance and examination, to enter up judgment and award execution against such garnishee, for all sums of money due to the defendant in his or possession or custody, for the use of the plaintiff, or so much thereof as shall be sufficient to satisfy the debt and costs, and all charges incident to levying and securing the same; and all the goods

and effects whatsoever in the hands of any garnishee or garnishees, belonging to any defendant, shall be liable to satisfy the plaintiff's judgment, and shall be delivered to the Sheriff, or other officer serving the attachment. And when any garnishee summoned as aforesaid, shall not appear and discover on oath as by this act directed, it shall be lawful for the justice to issue a notice in writing for the said garnishee to appear at such place and on such day as he may appoint, to show cause why judgment shall not be entered and execution awarded against him; which notice shall be served by the sheriff, constable, or other officer; and upon such notice being duly executed and returned, if the garnishee shall fail to appear and discover upon oath in manner aforesaid, the justice shall give judgment against such garnishee for the plaintiff's full demand, with costs, and award execution accordingly.

Where any property, attached as aforesaid, shall be claimed by any person or persons, and to determine the right the intervention of a jury may be necessary, the party claiming such property may appeal to the next county court, where such right, upon an issue joined, shall be tried by a jury of good and lawful men; the party claiming first giving bond with sufficient security to pay all costs and charges in case he, she, or they shall fail to prosecute the said suit with effect; and the verdict of the jury in such case shall be conclusive as to the parties then in court, and the court shall give judgment accordingly.

When any garnishee shall on his or her garnishment, deny that he or she has in his or her possession any property of the defendant, and the party plaintiff in such attachment, shall on affidavit, suggest to the justice that such garnishee owes to, or has property in his or her hands, belonging to the defendant, or when any garnishee shall on his or her garnishment, make such a statement of facts that the justice before whom such garnishment shall be made, cannot proceed to give judgment thereon, then and in either of these cases, the justice shall return the attachment and other papers to the next county court to be held for his county, and the court shall order an issue or issues to be made up and tried by a jury, and the court shall give judgment on the verdict of the jury as in other cases.

When any goods or other estate shall be attached by virtue of any attachment issued agreeably to the directions of this act, it shall and may be lawful for the defendant or defendants, his, her, or their attorney, agent, or factor, to replevy

the same, by giving bond with sufficient security to the sheriff, constable or other officer, serving such attachment; which said bond the sheriff, constable, or other officer is hereby empowered and required to take, to appear before the justice to whom such attachment is returnable, and to abide by, perform and satisfy the order and judgment of such justice. And when the estate attached shall, by three freeholders of the county, to be summoned by the sheriff, constable, or other officer for that purpose, be certified on oath to be perishable, and the person or persons to whom it belongs, his, her, or their attorney, agent, or factor shall not, within thirty days after the serving such attachment replevy the same, then such estate shall be sold at public vendue by the sheriff, constable, or other officer,—he having first advertised such sale at the court-house and other public places in his county, at least ten days before the sale. And the money arising from such sale shall be liable to the judgment obtained upon such attachment, and shall be retained and kept by the officer to wait the event of such judgment.

Whenever any garnishee shall on oath confess, that he or she has in his or her hands any property of the defendant of a specific nature, or is indebted to such defendant by any security or assumption for the payment or delivery of tobacco or other specific articles, then, in either of those cases, the justice before whom such garnishment shall be made, shall immediately order three freeholders to be sworn to enquire of the value of such specified property, and their verdict shall subject such garnishee to the payment of such valuation, or so much thereof as shall be sufficient to satisfy the debt and costs of the party at whose instance such garnishees shall have been summoned. But that such garnishee, who may on oath confess that he or she has in his or her hands any specific property of the defendant as left or deposited in his or her possession by such defendant, may always exonerate him or herself by delivering such property to the sheriff, constable, or other officer who levied such attachment, or may levy the execution issued thereon. And when judgment shall be entered up against any garnishee, declaring as aforesaid, he shall, on giving security if required, have the same stay of execution as such garnishee would have been entitled to had he been original defendant in the suit.

In all suits commenced by attachment as in this act directed, which shall be returnable before a justice of the peace, the justice to whom such attachment shall be returned shall stay, all proceedings thereon for the space of thirty days, un-

less the defendant to such suit by attachment, his agent, or attorney shall replevy the goods, chattels, or property so attached.

The person or persons entering themselves as special bail on replevying property attached, shall only be held liable to answer the value of the property which he, she, or they as aforesaid do respectively hold or have returned in the garnishment, and no more; but the security replevying, shall not avail themselves of paying the value of the property so replevied, unless such security shall, on the return of such attachment to the justice, require that such value should be ascertained by an inquiry: which inquiry the justice shall have executed on request as aforesaid, by three freeholders by him summoned to assess and value such property on oath, notice being given to the plaintiff in attachment, his agent, or attorney, at least five days before such inquiry shall be executed.

When any attachment issued agreeably to this act, shall be returned to any justice of this state as levied on the goods and chattels, lands and tenements of any person or persons residing without the county in which such attachment issued, it shall be the duty of the justice to direct advertisements of the same for the space of thirty days.

No attachment, warrant, or other process issued by a justice of the peace, shall be set aside for the want of form, if the essential matters required are set forth in such process.

See *Acts of Assembly*.

For the Form of a REPLEVIN BOND—See *Appendix*.

ATTORNIES.

The county court shall appoint an attorney properly qualified to act for the state, who shall hold his office during good behaviour; and shall prosecute all matters cognizable in the county court of pleas and quarter sessions where he shall be appointed, for and on behalf of the state.

The court shall not suffer more than one attorney to speak for plaintiff or defendant in any cause.

Every attorney shall file his declaration in the clerk's office, any time within the three first days of the term, to which the writ is made returnable, and on failure thereof, such suit shall be dismissed by the court at the cost of the plaintiff; which cost being paid by the said plaintiff to the clerk, he may warrant such attorney for all costs by him so paid, and the receipt

of the clerk is evidence in support of such claim; and the justice trying the warrant, may give judgment and issue execution thereon: and such attorney shall be further liable to action for damages.

BAIL.

Bail, in *criminal cases*, to which this article is solely confined, is the setting at liberty of one arrested or imprisoned, on surety taken for his appearance at a day limited.

A man's bail are looked upon as jailors of his own choosing, and may take and deliver him, if they suspect he will deceive them, or may bring him before the justice of the peace, by whom he shall be committed, unless he find new sureties.

All prisoners are bailable by one or more sufficient sureties, unless for capital offences, where the proof is evident or the presumption great.—*Const.* §39.

These offences are capital:—High treason; petty treason; murder; burglary; robbery in dwelling houses or in or near the highway, or of churches; house burning, or burning of barns where there is corn or grain; to acknowledge or procure to be acknowledged any deed enrolled, recognizance, bail, or judgment in the name of another not consenting or privy; for a mother to conceal the birth of her bastard child, so that it doth not appear whether it were born dead or alive; taking away feloniously goods in any booth or tent in any fair or market; buggery; forging any deed or will, or writing relating to a term of years or annuity, bond, obligation, acquittance, release, or discharge of any debt or demand of any personal chattels, being a second offence after conviction and judgment for the former; horse stealing; acknowledging judgment in the name of another; maiming with malice aforethought, for a second offence after a former conviction and judgment; pick pocket; taking above twelve pence from the person privately and secretly; poisoning, of malice prepense; rape; acknowledging a recognizance in the name of another; the stealing of goods to the value of twenty shillings, out of a dwelling house or outhouse thereto belonging, or therewith used, in the day time, by breaking the same, though no person therein; robbery of any person in his dwelling house, booth, or tent, or in any fair or market, though not put in fear; stabbing another mortally,

that other not then having a weapon drawn, or [illegible] then stricken the party stabbing, so that he die [illegible] six months; stealing of women having lands or good[illegible]ing heirs apparent, contrary to their wills, who are [illegible]wards married to the offender, or by his consent to oth[illegible] de-filed; carnally knowing a woman child under ten years of age; and all such as have been before convicted and had judgment for any other felony than these above described, not being petit larceny. Also, counterfeiters of any note or notes of the bank of North-America, or where the president, inspector, director, officer, or servant of the said bank shall convert any of the property, money, or credit of the said bank to his own use, or in any other way be guilty of fraud or embezzlement as an officer or servant of the bank; bigamy for the second offence, after clergy allowed in the first; counterfeiting the bills of credit emitted pursuant to acts of 1783, c. 1. and 1785, c. 5 or making or constructing any die, press, type, or other instrument for emitting or counterfeiting them; altering or defacing any of the said bills with intent to change the value; or knowingly passing or uttering any counterfeit likeness thereof, after a conviction and judgment for the first offence; or if one be a second time convicted of uttering or passing such bills of credit, lottery tickets, or loan office certificates; counterfeiting any of the colonel's, comptroller's, auditor's, commissioner's, or any other certificates issued by public authority, with an intention to defraud or deceive; or altering or defacing any such certificates with intention to change the value; or knowingly passing or offering to pass or present as a voucher any counterfeit likeness of such certificates, upon a second conviction after a former conviction; forging or counterfeiting the stamp, note, or receipt of an inspector of tobacco; or offering for sale or payment, or demanding of any inspector of tobacco on any such forged note or receipt, knowing it to be such; or causing to be inspected any hogshead or cask of tobacco stamped with a forged or counterfeited stamp; or taking any stave, plank, or heading out of any hogshead of tobacco stamped as herein directed, after such hogshead shall have been delivered from any of the public ware-houses, for a second conviction after a former conviction and judgment; stealing, or by violence, seduction, or other means taking and conveying away any slave or slaves the property of another, with an intention to sell or dispose of to another, or appropriate to his own use; or by violence or other means taking or conveying away any free negro or person of mixed blood out of this state into another, with in-

the clerk is tenetrying sell or dispose of; wilfully and maliciously killing a slave or servant in the act of resistance to his owner; a master or commander of any ship or vessel conveying out of this state on board his vessel any negro or mulatto slave or slaves, without the owner's consent in writing, or who shall receive on board any such slave or slaves or permit the same to be done for that purpose; or who shall wickedly and willingly conceal or permit to be concealed on board, any such slave or slaves absconding from the master or mistress, citizens of this state, for the purpose of enabling such slave or slaves to escape out of this state; killing another in a duel; a married man or woman to take another wife or husband, the first still living.

Of the foregoing offences, some are capital also as they regard accessories *before the fact*,—such as petty treason, murder, burglary, robbery in dwelling houses, or in or near the highway, or of churches; house burning or burning of barns where there is corn or grain; to acknowledge or procure to be acknowledged any deed enrolled, recognizance, bail, or judgment in the name of another not consenting or privy; to break any dwelling house or out house thereto belonging or therewith used, in the day time, and steal money or goods to the value of twenty shillings or upwards, therein being, though no person shall be therein; killing another in a duel.

For all offences not capital, or even for capital offences where the proof is not satisfactory or the circumstances strong against the prisoner, any one justice of the peace may admit the party to bail.

The bail to be required, should be reasonable, considering the nature of the offence and the circumstances of the offender. Excessive bail shall not be required. *Bill of Rights*, art. 10. *Const. U. S.* ad'l. art. 10.

If the bail taken, be found to be insufficient, either the justice bailing or other person having power to bail, may require the party to find better sureties, and to enter into a new recognizance with them, and may commit him on refusal.

The person who is to take bail may examine them on their oaths concerning their sufficiency.

To refuse bail where the party ought to be bailed (he offering the same) is punishable by indictment: also, admitting to bail, where he ought not, is punishable by fine.

Also, the sheriff or his deputy may bail persons arrested upon a *capias* issuing on an indictment found in any court of

record, by taking recognizance for his appearance at the next court of the county where he ought to answer.

See *Criminals, Examination.*

For Forms of RECOGNIZANCE—See *Appendix.*

BARRETRY.

Barretry is the offence of frequently exciting and stirring up suits and quarrels between the citizens of the state, either at law or otherwise. The punishment for this offence in a common person is by fine and imprisonment, but if the offender belongs to the profession of the law, as is sometimes the case, a barretor who is thus able as well as willing to do mischief, ought also to be disabled from practising for the future.

A common barretor is said to be the most dangerous oppressor in the law; for he oppresseth the innocent by colour of law, which was made to protect them from oppression. No one can be a barretor in respect of one act only; for every indictment for such crime must charge the defendant with being a *common barretor.* And it hath been holden, that a man shall not be adjudged a barretor for bringing any number of suits in his own right, though they are vexatious, especially if there be any colour for them; for if they prove false, he must pay the costs.

Hereunto may be referred the offence of suing another in the name of a fictitious plaintiff, either one not in being at all, or one who is ignorant of the suit.

BASTARDY.

A bastard is one who is begotten and born out of lawful matrimony. So it is of all children born so long after the death of the husband, that, by the usual time of gestation, they could not be begotten by him.

If a man dies, and his widow soon after marries again, and a child is born within such time as that by the course of nature it might have been the child of either husband, he may when he arrives at years of discretion choose which father he pleases.

Children born during wedlock, may in some circumstances be bastards; as if the husband be out of the country for above

nine months, so that no access can be presumed, her issue during that period shall be bastards.

So also if there is an apparent impossibility of procreation on the part of the husband; as if he be only eight years old or the like, there the issue of the wife shall be bastards.

Two justices of the peace upon their own knowledge, or information made to them, that any single woman within their county is big with child, or delivered of a child or children, may cause such woman to be brought before them, and examine her upon oath concerning the father; and if she shall refuse to declare the father, she shall pay the sum of fifty shillings, and give sufficient security to keep such child or children from being chargeable to the parish, or shall be committed to prison until she shall declare the same, or pay the sum aforesaid and give security as aforesaid. But in case such woman shall upon oath, before any two justices, accuse any man of being the father of a bastard child or children begotten of her body, such person so accused shall be judged the reputed father, and stand charged with the maintenance of the same as the county court shall order, and give security to the justices of the said court to perform the said order, and to indemnify the county where such child or children shall be born, free from charges for his, her, or their maintenance; and may be committed to prison until he find securities for the same, if such security is not by the woman before given.

Any two justices at their discretion, may bind to the next county court him that is charged on oath as aforesaid to have begotten a bastard child, which shall not be then born; and the county court may continue such person upon security until the woman shall be delivered, that he may be forthcoming when the child is born. *Acts* 1741, c. 14.

If a woman servant shall have a bastard during her servitude, she shall by order of the county court serve her master for one year after her time of servitude shall be expired; but if gotten with child by her master, she shall immediately after her delivery be sold by the overseers of the poor for one year, and the money appropriated to the use of the poor; or if she shall have a child by any negro, mulatto, or Indian, she shall be sold for two years, by the same persons and to the same uses; and the child shall be bound out by the county court until it shall arrive at the age of thirty-one years.

Whenever two justices shall bind the reputed father of a bastard child to appear at court in manner as prescribed in the 10th section of the act of 1741, and he shall not appear

agreeably to his recognizance; or whenever a woman shall swear a child to a man in manner as prescribed in said act, and he shall abscond, or so conceal himself that the process of said justices cannot be served on him, then it shall be lawful for the county court on return of the recognizance or other proceedings from the justices, to order their clerk to issue a *capias* or an attachment, at the discretion of said court, to any county within the state, against the reputed father so absconded; and the same proceedings may be had thereon as in other like cases of a *capias* or an attachment.

Whenever any county court shall charge the reputed father of a bastard child with the maintenance of the same, in manner as prescribed in the 10th section of the aforesaid act, and the said reputed father shall refuse or neglect to pay the same, then it shall be lawful for such court, on notice being served on the defendant at least ten days before the sitting of said court, or such notice being returned by the sheriff of the county that the defendant is not to be found, to order an execution against the goods, chattels, lands, and tenements of the said defendant, sufficient to satisfy such sum as the said court may adjudge for the maintenance of said child: Provided that the party grieved by such non-payment shall make application for the same. *Acts* 1790, c. 17.

See *Fornication*.

BATTERY—See *Assault*.

BAWDY-HOUSE—See *Lewdness*.

BEHAVIOUR.

Security for the peace or good behaviour, consists in being bound with one or more sureties in a recognizance or obligation to the state, entered on record and taken in some court or by some judicial officer, such as a justice of the peace, judge, &c. whereby the parties acknowledge themselves to be indebted to the state in the sum required (for instance one hundred pounds) with condition to be void and of none effect if the party shall appear in court such a day, and in the mean time keep the peace, either generally towards all the citizens of the state, or particularly also with regard to the person who craves the security: or if it be for the good behaviour, then on condition that he shall demean and behave himself well (or be of good behaviour) either generally or specially for the

time therein limited, as for one or more years, or for life. This recognizance if taken by a justice of the peace, must be certified to the next county court of pleas and quarter sessions; and if the condition of such recognizance be broken by any breach of the peace in the one case, or any misbehaviour in the other, the recognizance becomes forfeited or absolute; and thereupon a *scire facias* issues against the party and his sureties, to which they plead and join issue, or make default, and the court proceeds to give judgment and award execution as in other cases.

Any justices of the peace by virtue of their commission, or those who are *ex officio* conservators of the peace, as the judges of the superior courts, coroners, or sheriffs, may demand such security; or according to their discretion they may commit all breakers of the peace, or bind them in recognizance to keep it. Also constables may apprehend all breakers of the peace, and commit them till they find sureties for the keeping it. Security of the peace may be granted by justices of the peace and judges, at the request of any citizen, upon due cause shown: or if the justice of the peace is averse to act, it may be granted by a mandatory writ, called a *supplicavit*, issuing out of the superior court, which will compel the justice to act as a ministerial and not as a judicial officer; and he must make a return to such writ, specifying his compliance, under his hand and seal; or the superior court may take such recognizance themselves. A justice of the peace may require sureties of any person being *compos mentis*, whether a fellow justice or other magistrate, or whether he be merely a private man. Wives may demand it against their husbands, or husbands if necessary against their wives; but married women and infants under age, ought to find security by their friends only, and not to be bound themselves, for they are incapable to engage themselves to answer any debt, which is the nature of those recognizances or acknowledgments.

A recognizance may be discharged by the death of the principal party bound thereby, if not before forfeited; or by order of the court to which such recognizance is certified by the justice, if they see sufficient cause; or if he at whose request it was granted, if granted upon a private account, will release it, or does not make his appearance to pray that it may be continued.

Thus far what has been applicable to both species of recognizances, for the peace and for the good behaviour; but as these two species of securities are in some respects different,

especially as to the cause of granting, or the means of forfeiting them, they are now to be considered separately.

And first it shall be shown for what cause such a recognizance, with sureties for the peace, is grantable; and then how it may be forfeited.

Any justice of the peace may by virtue of his office bind all those to keep the peace, who in his presence make any affray, or threaten to kill or beat another; or contend together with hot angry words; or go about with unusual weapons or attendance, to the terror of the people; and all such as he knows to be common barretors, and such as are brought before him by the constable for the breach of the peace in his presence; and all such persons as having been before bound to the peace, have broken it and forfeited their recognizances. Also when any private man hath just cause to fear that another will burn his house, or do him a corporal injury, by killing, imprisoning, or beating him, or that he will procure others to do so, he may demand surety of the peace against such person; and every justice of the peace is bound to grant it, if he who demands it will make oath that he is actually under fear of death or bodily harm, and will show that he has just cause to be so by reason of the other's menaces, attempts, or having lain in wait for him; and will also further swear that he does not require such surety out of malice or for mere vexation.

This is called swearing the peace against another, and if the party does not find such sureties as the justice in his discretion shall require, he may be immediately committed till he does.

Such recognizance for keeping the peace, when given, may be forfeited by any actual violence, or even an assault and menace to the person of him who demanded it if it be a special recognizance; or if the recognizance be general, by any unlawful action whatsoever that either is or tends to a breach of the peace—as by joining in any riot, rout, or unlawful assembly, or by hunting or appearing by day or night disguised or with painted faces, for any unlawful purpose; or knowingly sending a letter without a name, or with a fictitious name, demanding money or other valuable things, or threatening to kill or burn the house of any person; or committing any affray, or any forcible entry or detainer; or riding or going armed with dangerous or unusual weapons, under such circumstances as are apt to terrify the people; or spreading false news to terrify the people, or making false and pretended prophecies with intent to disturb the peace; or challenging

to fight by word or letter, or by being the bearer of such challenge; or making, publishing, or communicating any libel; or by manslaughter, rape, robbery, unlawful imprisonment, or the like; or by lying in wait for any person to kill or beat him, or the like; or by any private violence committed against any of the citizens.

But a bare trespass upon the lands or goods of another, which is a ground for a civil action, unless accompanied by a wilful breach of the peace, is no forfeiture of the recognizance; neither are mere reproachful words, as calling a man a knave, rogue, or liar, any breach of the peace so as to forfeit one's recognizance (being merely the effect of heat and passion) unless they amount to a challenge to fight.

Recognizance with sureties for the good behaviour, includes security for the peace and somewhat more: it will therefore be examined here in the same manner as the other.

Justices of the peace may bind over to the good behaviour all those that be not of good fame, wherever they be found. Under which general words a man may be bound to his good behaviour, for causes of scandal against morality as well as against the peace—as for haunting bawdy houses with women of bad fame, or for keeping such women in his own house, or for words in abuse of the officers of justice in the execution of their office; all night walkers; eaves-droppers; such as keep suspicious company, or are reputed to be pilferers or robbers; such as sleep in the day and wake in the night; common drunkards, whoremasters, the putative fathers of bastards, cheats, idle vagabonds, and other persons whose misbehaviour may reasonably bring them within the general words, '*persons not of good fame*,'—an expression that leaves much to be determined by the discretion of the magistrate himself: but if he commits a man for want of sureties, he must express the cause thereof with convenient certainty, and take care that such cause be a good one.

A recognizance for the good behaviour, may be forfeited by all the same means as one for the security of the peace may be; and also by some others, as by going armed with unusual attendance to the terror of the people, by speaking words tending to sedition, or by committing any of those acts of misbehaviour the recognizance was intended to prevent; but not barely by giving fresh cause of suspicion of that which perhaps may never actually happen; for though it is just to compel suspected persons to give security to the public against misbehaviour that is apprehended, yet it would be hard, upon

such suspicion, without the proof of any actual crime, to punish them by a forfeiture of their recognizance.

BIGAMY—See *Polygamy*.

BILLS OF SALE—See *Deeds*.

BLASPHEMY.

Blasphemy is an offence against the Almighty, by denying his being or providence, or by contumelious reproaches of our Saviour Christ. Whither also may be referred all profane scoffing at the holy scripture, or exposing it to contempt or ridicule. These are offences punishable by fine and imprisonment, or other infamous corporal punishment; for Christianity is a part of the laws of this state. 4 *Blac. Com.* 59.

Thus in the year 1656, James Nayler, for personating our Saviour, and suffering his followers to worship him and pay him divine honours, was sentenced to be set in the pillory, and to have his tongue bored through with a red hot iron, and to be whipped, and stigmatized in the forehead with the letter B. 1 *State Trials*, 802.

It is declared by the 32d section of our constitution, "that no person who shall deny the being of God, or the truth of the protestant religion, or the divine authority either of the Old or New Testaments, or who shall hold religious principles incompatible with the freedom and safety of the state, shall be capable of holding any office, or place of trust or profit in the civil department, within this state."

See *Arrests*.

BOATS, CANOES, AND PETTIAUGERS.

Any person or persons who shall take away from any landing or other place, any boat, canoe, or pettiauger, or shall loose, unmoor, or turn any such vessel adrift, shall forfeit to the owner or possessor twenty shillings, to be recovered by a warrant issued by any justice of the peace of the county wherein the offence is committed; who shall hear and determine the offence, and if after conviction the offender refuses or neglects to pay the said sum, the said justice by his warrant, may commit such person to the county jail, there to remain till he shall have paid the same and costs; and the of-

fender is moreover liable to an action of the party injured for damages.

Any white servant, negro, or slave offending as above stated, and being thereof convicted, shall be whipped not exceeding thirty-nine lashes, at the discretion of the justice, unless the master, mistress, or owner will pay the fine.

But these penalties do not extend to any person pressing any such vessels by public authority, or seizing his own proper boat, canoe, or pettiauger, or seizing the same for the owner and by his authority; nor to any servant or slave taking any such by order of his master, mistress, or overseer; in which last case the master, mistress, or overseer is liable to the penalty.

BONDS.

The clerks of the county court shall record the names of such justices as shall be present in court or on the bench, at the time of the qualification of the sheriffs, clerks, entry-takers, and registers; which justices, in case of their failure to take the bonds required by law, shall be bound and liable as the sureties of such of the said officers as they have failed to take such bonds from, and may be proceeded against accordingly by the treasurer and others concerned: and in such cases, a copy of the record of the court, attested by the clerk, is sufficient evidence, and judgment shall be had thereon.

All clerks of the superior and county courts, clerks and masters in equity, registers, public inspectors, and surveyors shall renew their several bonds for the faithful discharge of their duty in office, with good and sufficient securities, once in every three years at the respective courts after the first day of June, 1794; otherwise the court shall appoint another or others in the place or places of him or them so refusing or neglecting.

BOOK-DEBTS.

In any action for goods, wares, and merchandize sold and delivered, or for work and labour done, where the plaintiff shall swear or affirm (as the case may be) that the matter in dispute is a book account, and that he hath no means to prove the delivery of such articles as he shall then propose to prove by his own oath, or any of them, but by his books; such book may be given in evidence if he shall further swear or af-

firm that such book doth contain a true account of all the dealings, or of the last settlement of accounts between them, and that all articles therein contained and by him so proved were *bona fide* delivered, and that he has given to the defendant all just credits :—and such book and oath or affirmation shall be admitted as good evidence in any court of law, for the several articles so proved to have been delivered within two years before said action brought, but not for any article of longer standing.

A copy from the book of accounts, proved in manner aforesaid, may be given in evidence in any such action, unless notice be given at the joining of the issue, that the plaintiff will require the book to be produced at the trial.

No plaintiff shall be at liberty to prove by his own book and oath or affirmation as aforesaid, any articles the amount whereof shall exceed thirty pounds : and the defendant shall be at liberty to contest the plaintiff's evidence and oppose it by other legal evidence.

In all trials at law, where the cause of action may be a book account, and to which executors or administrators may be either plaintiff or defendant, and two years from the delivery of the articles have not elapsed previous to the death of the deceased, such executor or administrator, on proving that he found the amount so stated on the books of the deceased, and that he believes the same to be just, may give such account in evidence, either where he is plaintiff in the suit, or where such account may be pleaded as a set-off, although more than two years may have elapsed previous to the bringing such action ; provided suit is brought thereon, or set-off pleaded within one year after the death of the deceased, or administration granted.

The statutory provisions of this article form a rule of practice, in express terms, for the *courts* only. But as justices of the peace, in the hearing of civil causes out of court, have generally endeavoured to adopt the same rule, and with much propriety it is believed, these provisions are recommended in their practice also, for the sake of uniformity and convenience.

BRIBERY.

Bribery is when any person concerned in the administration of justice, takes any undue reward to influence his behaviour in his office. It is punishable by fine and imprisonment at the common law or by statute, by a forfeiture of treble the bribe,

and by fine and imprisonment at the discretion of the judges or justices, and by a discharge from the public service for ever.

See *Arrest.*

BRIDGES.

Every contract, agreement, and order by the justices of the court of any county, entered into or made for or concerning the building, keeping, or repairing bridges in such manner as to them shall seem most proper, shall be good against them and their successors.

Where large water courses or creeks run through a county, and owing to the rapidity of the water or the width of the stream, it would be too burthensome on the inhabitants to have bridges built or kept in repair upon or across the same by a tax, a majority of the justices of such county may contract with builders to build toll bridges or expensive causeways, and may lay the toll to be paid on all persons, horses, carriages, and cattle passing over the same; the revenue from which, for such a number of years as the court may agree upon, to be granted to the builders of the said bridges, their heirs, and successors, for the building thereof: which bridges, being built under the direction of the said court, from the revenue arising from the toll thereof so granted, the said builder or builders, his or their heirs or successors, shall keep in constant repair at his or their sole expense; in default of which, on conviction, they shall forfeit all right and title to the toll allowed by the court.

Every owner of a toll bridge shall give bond and sufficient security in the sum of 500*l.* payable to the chairman of the court and his successors, with condition to keep such bridges in good repair, and always to be well attended for travellers or others, their horses, carriages, and effects; and in case of a breach of the said bond by non-compliance with the condition, the injured party may bring an action of debt on such bond, in the name of the chairman, and recover the damages sustained, and have the same levied by execution to his or her own use.

And it seems to have been intended, that any person detained at a toll bridge for want of attendance thereat by the toll bridge keeper or his servants, or other neglect of duty, might by a warrant from any justice of the peace, recover five pounds for any such default or neglect; which should not bar

any action for personal damages suffered by reason of the insufficiency of the bridge. *Acts* 1784, c. 14, § 15.

The county courts may appoint where bridges shall be built. Necessary bridges through swamps, and over small rivers, creeks, or streams shall be of the width of sixteen feet: and overseers of roads may cut poles and other necessary timber for repairing and making bridges and causeways. Any such bridge remaining out of repair fifteen days, unless hindered by extreme bad weather, the overseer shall forfeit forty shillings, besides such damage as may be sustained; to be recovered by the informer, by a warrant from a justice of the peace, to his own use.

Where a bridge shall be necessary, and the overseer with his assistants cannot conveniently make it, the court of the county shall contract and agree for the building, keeping, and repairing thereof; and shall lay the charge on the county. And where a bridge is necessary over a creek or river dividing one county from another, the court of each county shall join in the agreement for building, keeping, and repairing the same; and the charge shall be defrayed by both counties, in proportion to the number of taxables in each.

The warrant to be issued by the justice may be like any other warrant, and be tried in the same manner: and if the party be found guilty, judgment may be given and execution issued in the usual form.

See *Roads and Ferries*.

BURGLARY.

Burglary is the breaking and entering the dwelling house of another, or a church, in the night, with intent to commit a felony therein, whether the felonious intent be executed or not.

In this definition there are four things to be considered,—the *time*, the *place*, the *manner*, and the *intent*.

1st, The *time* must be by night, and not by day. If there be day-light enough begun or left to discover a man's face by, it is no burglary. But this does not extend to moon-light; for then many midnight burglaries would go unpunished.

2d, As to the *place*, it must be in a mansion house or a church, or the gates or walls of a town. That of the mansion house is the most frequent; and in that case it is indispensably necessary to form its guilt, that it must be a mansion or dwelling house. No distant barn, warehouse, or the like, are under the same pri-

vileges, nor looked upon as a man's castle of defence: nor is a breaking open of houses wherein no man resides, and which therefore for the time being are not mansion houses, attended with the same circumstances of midnight terror. A house however wherein a man sometimes resides, and which the owner only hath left for a short season with an intention of returning, is the object of burglary; and if the barn, stable, or warehouse be parcel of the mansion house, though not under the same roof or contiguous, a burglary may be committed therein;—for the capital house protects and privileges all its branches and appurtenances if within the curtilage or homestal; that is, if used together with the capital house in the same yard, whether open or enclosed. A chamber in a college, where each inhabitant has a distinct property, is to all other purposes as well as this, the mansion of the owner. So also is a room or lodging in any private house, the mansion, for the time being, of the lodger. The house of a corporation, inhabited in separate apartments by the officers of the body corporate, is the mansion house of the corporation, and not of the respective officers: but if I hire a shop, parcel of another man's house, and work or trade in it, but never lie there, it is no dwelling house, nor can a burglary be committed therein;—for by the lease it is severed from the rest of the house, and therefore is not the dwelling house of him who occupies the other part: neither can I be said to dwell therein, when I never lie there. Permanent edifices, as a house or the like, are the only objects of burglary, and not any temporary erection.

3d, As to the *manner* of committing burglary, there must be both a breaking and an entry to complete it. But they need not be both done at once;—for if a hole be broken one night, and the same breakers enter the next night through the same, they are burglars. There must be an actual breaking, or taking out the glass of, or otherwise opening a window; picking a lock, or opening it with a key,—nay, by lifting up the latch of a door, or loosening any other fastening which the owner has provided. But if one leaves his doors or windows open, it is his own folly and negligence; and if a man enters therein, it is no burglary,—yet if he afterwards unlocks an inner or chamber door, it is so. But to come down a chimney is a burglarious entry; for that is as much closed as the nature of things will admit. So also to knock at the door, and upon opening it to rush in, with a felonious intent; or under pretence of taking lodgings, to fall upon the landlord and rob him; or to procure a constable to gain admittance in order to search for traitors, and then to bind the constable

and rob the house. All these entries have been held burglarious though there was no actual breaking; for the law will not suffer itself to be trifled with by such evasions, especially under the cloak of legal process. So if a servant opens and enters his master's chamber door, with a felonious design; or if any other person lodging in the same house, or in a public inn, opens and enters another's door, with such evil intent, it is burglary. Nay, if the servant conspires with a robber, and lets him into the house by night, this is burglary in both; for the servant is doing an unlawful act, and the opportunity afforded him of doing it with greater ease, rather aggravates than extenuates the guilt. As for the entry, any the least degree of it with any part of the body, or with an instrument held in the hand, is sufficient,—as to step over the threshold, to put a hand or hook in at a window to draw out goods, or a pistol to demand one's money, are all of them burglarious entries. If a man enters by night by the doors open, with the intent to steal, and is pursued, whereby he opens another door to make his escape, this is not burglary; for he broke and went out, not broke and entered. There must be both a breaking, either in fact or by implication, and also an entry, to complete a burglary.

4th, As to the *intent*; such breaking and entering must be with a felonious intent, otherwise it is only a trespass. And it is the same thing whether such intention be actually carried into execution, or only demonstrated by some attempt or overt act, of which the jury is to judge: and therefore such a breach and entry as has been before described, by night, with intent to commit a robbery, a murder, a rape, or any other felony, is burglary, whether the thing be actually perpetrated or not: and it makes no difference whether the offence were felony at common law, or only created by statute or act of assembly; for a statute or act which makes an offence felony, gives it incidentally all the properties of a felony at common law.

This offence is a capital felony with respect to the principals.

By acts of 1806, c. 6, it is declared that if any person or persons shall break any dwelling house, shop, warehouse, or other out house thereto belonging, or therewith used, in the day time, and feloniously take away any money, goods, or chattels, of the value of twenty shillings or upwards, therein being, although no person shall be within the same; or shall comfort, aid, abet, assist, counsel, hire, or command any person or persons to commit such offence, and being there-

of, lawfully convicted, shall suffer death without benefit of clergy.

BURIALS—See *Coroner.*

BURNING—See *Arson.*

BUYING OF TITLES—See *Champerty, Maintenance.*

CATTLE, HORSES, AND HOGS.

By the laws of this state, if any person or persons whatsoever, either inhabiting Virginia or this state, shall after the ratification of this act, presume to drive, lead, transport, or carry any cattle, horses, or hogs to range upon any person's lands, shall forfeit and pay the sum of ten pounds; and that no person or persons whatsoever, inhabiting this state shall give leave to any other person or persons, either inhabitant or foreigner, to turn loose, drive, or put on his land, any cattle, horses, or hogs, under the like penalty of ten pounds.

No foreigner whatsoever, either by consent or permission of any other person or persons inhabiting this state, or otherwise, shall presume or offer to drive, lead, or bring into this state, any stocks of cattle, hogs, or horses, with intention to winter them here, or to destroy the herbage or mast, under the penalty of twenty pounds. It is hereby meant and intended, and so shall be understood and taken, that no person shall be deemed an inhabitant that holds lands by entry, survey, or patent; but such as actually and constantly reside on such lands, or keep the same always tenanted, cultivated, and improved.

The ranger of each precinct or division where such offence shall be committed, or on his default, the keeper of the toll-book is hereby appointed to make distress of such cattle, hogs, or horses of any person or persons so offending. The one-half of which fine or forfeiture, shall be to the ranger or keeper of the toll book, whichsoever shall make the distress, and the other half to the justices for the use of the county where the offence shall be committed.

When such distress is made, or which may hereafter be made by the owner of the land, as well as the officers aforesaid, the stock so distrained shall be kept four days, unless sooner redeemed or replevied by the owner, who, on paying the penalty and the reasonable charges, shall have them at any time within four days after seizure; otherwise, after the

expiration of the said four days, they shall be appraised by three indifferent freeholders, to be appointed and sworn by some magistrate, and the property shall be immediately vested in the person or persons seizing the same, he or they returning the said appraisement to the clerk of the county court, with an exact account of the marks or brands of such horses, cattle, or hogs, which shall be set up at the court house the next court; and any person proving the right to such horses, cattle, or hogs, at any of the four next courts in the said counties, after such return of that appraisement, having given the distrainer notice, shall have an order or judgment of the said court for the overplus, according to the appraisement, the penalty and charges deducted.

No person, being an inhabitant of this state, and not having a freehold of fifty acres of land, or possessed of, or occupying lands or tenements, shall keep, as owner, a stone-horse or horses, or unspayed mare or mares, or any more than one gelding, or spayed mare to run at large.

If any person, not qualified as aforesaid, shall keep any horse or mare running at large, except one gelding and one spayed mare, as aforesaid, it shall and may be lawful for any person to take up the same, who is obliged and directed to give notice thereof, in writing, to the owner, within three days after such taking up; which owner shall have liberty to appear at the next succeeding court of the county wherein he dwelleth, and if he can prove to the satisfaction of the said court, that he is qualified according to law, to keep such horse or mare so taken up, he shall have the same restored; but if he shall fail in his proof aforesaid, he shall pay to the person taking up, twenty shillings for every horse or mare so taken up: and if the owner of such horse or mare shall refuse to pay the aforesaid sum of twenty shillings, that then it shall and may be lawful for the taker up of such horse or mare to sell the same at public vendue, to the highest bidder; and one-half of the money arising by such sale to take to himself, and the other half he shall deliver to the owner of such horse or mare.

Where the information of the taking up of such horses or unspayed mares as aforesaid, shall happen to be made to the owner or owners within less than ten days before the sitting of the court of the county where such owner resides, in such case he shall have liberty to appear at the next succeeding court after such court, to prove himself a freeholder, or possessed of, or occupying lands or tenements.

No person whatsoever, in this state, shall suffer or let go at large, any stone-horse or stone-horses of two years old or upwards, upon penalty of forfeiting such horse or horses, or the sum of twenty shillings to the taker up of every such stone-horse; provided the same be found running at large, and not within the confines of any fence, water, marsh, or swamp.

The taker up of such stone-horse shall, within ten days after the taking up thereof, carry the same horse and make oath before some justice of the peace, of his taking up the same; which proof being made the justice shall cause such stone-horse to be measured, and upon finding him not full thirteen hands high at two years old as aforesaid, the justice shall give a certificate, from under his hand certifying the same; and thereupon the taker up of such horse or horses so doing, shall keep the same until the owner shall redeem such horse or horses, by paying the sum of twenty shillings aforesaid to such taker up.

Such taker up shall set up advertisements, describing the said horse or horses, with his or their colour and brand, at the county court house door where such owner shall live or reside; and if the owner of such horse or horses shall within ten days after such notice given, tender to the taker up thereof, by paying the sum of twenty shillings or giving security for the payment thereof, that then, and in such case, such owner shall recover and redeem such horse or horses; otherwise the taker up thereof is hereby entitled to the right and property of such horse or horses: any law, usage, or custom to the contrary notwithstanding.

No person within this state shall presume to drive or kill any stock on any person's land within this state, except neighbours whose lands are very near adjacent, without leave first had and obtained from the owner of the said land whereon he or they shall be found ranging or hunting, contrary to law, under the penalty of five pounds for each and every time he or they shall be found ranging; the one-half to the owner of the land, and the other half to the informer: to be recovered by a warrant from two justices, which said justices are empowered finally to hear and determine the same.

If any free person or persons shall steal any neat cattle or hog, or shall alter or deface the mark or brand of any other person or person's horse, neat cattle, or hog, such person or persons, being thereof lawfully convicted, shall, for every neat cattle, or hog he or they shall steal; or for every horse, mare, colt, neat cattle, or hog, whose mark or brand he or they shall

alter or deface, over and above the value of such neat cattle or hog so stolen; or for every horse, mare, colt, neat cattle, or hog whose mark or brand he or they shall alter or deface, forfeit and pay the sum of ten pounds, to be recovered by action of debt in any court of record within this state by the owner of such horse, mare, colt, neat cattle, or hog, that shall be so stolen, or the mark or marks, brand or brands so altered or defaced; provided he prosecute for the same within six months after discovery of the fact committed: and after that time any person may, as well as the owner, sue for and recover the same, provided such prosecution is commenced within one year after discovery of the fact committed: and the offender shall, over and above the said fine, receive forty lashes on his bare back, well laid on; and for the second offence shall pay the fine above mentioned, and stand in the pillory two hours, and be branded in the left hand, with a red hot iron, with the letter T. And if any person or persons shall mismark or misbrand any unbranded or unmarked horse, mare, or colt, neat cattle, or hog not properly his or their own, he or they shall forfeit and pay the sum of ten pounds, over and above the value thereof, for every such horse, mare, colt, neat cattle, or hog, so mismarked or misbranded; to be recovered as aforesaid.

If any person or persons shall see any other person or persons committing any of the crimes aforesaid, and shall not discover the same, in ten days, to some magistrate, then and in such case, such person or persons, for not discovering the said crime, shall forfeit the sum of five pounds, for every time he shall see the said crime or crimes, or any of them, committed; to be recovered by any person who will sue for the same by warrant before a justice of the peace.

It shall be sufficient evidence to convict any person who has seen any of the aforesaid crimes committed, if it be proved that he has told any other person that he did see the said crimes, or any of them, committed.

If any person hereafter shall kill any one or more neat cattle or hogs in the woods, he shall within two days, show the head and ears of such hog or hogs and the hide with the ears on, of such neat beast or cattle, to the next magistrate or to two substantial freeholders, under penalty of five pounds; to be recovered by any person who will sue for the same by warrant as aforesaid.

Every person in this state who hath any horses, cattle, or hogs, shall have an ear mark and brand different from the ear mark and brand of all other persons; which ear mark and

brand he shall record with the clerk of the county where his horses, cattle, or hogs are, if not already recorded; and that he shall brand all horses with the said brand, from eighteen months old and upwards, and ear mark all his hogs, from six months old and upwards, with the said ear mark; and ear mark or brand all his cattle, from twelve months old and upwards, with the said ear mark or brand: and if any dispute shall arise about any ear mark or brand, the same shall be decided by the book of the clerk of the county court where such cattle, horses, or hogs are.

When any person shall buy any neat cattle from another, or come to the same by gift, will, or any other lawful means, that then and in such case, the person who has gained the same by any of the ways aforesaid, shall, within eight months brand the aforesaid neat cattle with his own proper brand in the presence of two creditable witnesses; a certificate of which shall be signed by the said witnesses.

If any strange cattle shall go into the cowpen of any person in this state, the owner of that cowpen, if he resides there, or the overseer or manager where the owner does not reside, shall be obliged to give public notice thereof, by affixing a note of the flesh marks and ear marks and brand of all such strange cattle as shall be at his pen at the church doors of the county where the said cowpen is, or where there is no church, at the court house door, in one month after such cattle shall come to his pen, under the penalty of twelve shillings for every beast that he shall neglect to give such notice of; to be recovered in the same manner, and to the same use, as the fine last mentioned.

If any negro, Indian, or mulatto slave shall kill any horse, cattle, or hog, belonging to any person whatsoever, without the consent of the owner or owners thereof, or shall steal, misbrand, or mismark any horse, cattle, or hog, such slave or slaves shall, for the first offence, suffer both his ears to be cut off, and be publicly whipped, at the discretion of the justices and freeholders before whom he or she shall be tried; and for the second offence, shall suffer death: and the trial and conviction of the said slave or slaves, shall be in such manner as is prescribed by an act of assembly, entitled "An Act concerning Servants and Slaves."

It shall not be lawful for any person who is not an inhabitant of this state, to fix any cowpen or settle or range any stock or number of cattle in this state; nor shall any inhabitant, on any account whatever, take charge of or receive under his or her care or custody, in order to range or raise stock,

from any number of cattle belonging to an inhabitant of any other state, or wherein a resident of any other state hath any share or interest, unless such owner or keeper shall be legally possessed, in his or her own right, of a sufficient quantity of land for feeding the said cattle on, allowing one hundred acres of land for every ten head of cattle: and that the owner or keeper of such cattle shall record in the inferior court of the county where he or she intends to range cattle, the number of acres he or she is legally possessed of, and whether it is by patent, will, deed, or otherwise, with the date of such patent, will, deed, or other instrument; and on any trial for a breach of the law, such record shall be deemed good evidence against the owner or keeper of cattle, as to the number of acres such person possesses: and if any person contrary to law shall presume to range, or keep a larger number of such cattle than ten head to every hundred acres of land he, she, or they shall be legally possessed of as aforesaid, and so in proportion; all the cattle exceeding that proportion shall be forfeited and sold by the sheriff of the county wherein the said cattle were ranged or kept, on legal proof made to the inferior court of the same county, by any freeholder thereof; the said freeholder giving the owner or keeper of the said cattle five days previous notice, that at the next inferior court to be held for the said county, he intends to lodge a complaint against such person for ranging or keeping a greater number of cattle than he is by law entitled to range or keep in the said county; and on proof of serving of the said notice personally or by having a copy of the same left at the place of such person's residence, the said inferior court shall, without delay, proceed to hear the complaint in a summary way, without the solemnity of a jury, and determine according to evidence and the right of the matter before them: and if judgment pass for the complainant, the clerk shall forthwith issue an order to the sheriff for the sale of all such cattle, agreeably to the judgment; which sheriff shall, without delay, either by himself or deputy execute the command of the said order and return the money to the next court; one-third part thereof to be paid to the complainant, one-third part thereof to be paid to the justices for the use of the poor, and the remaining third part to be paid to the owner of the cattle, if called for within twelve months, otherwise to be applied towards the contingent charges of the county.

No person or persons whatever, shall drive any cattle into this state, without having with him or them a certificate or certificates, under the hand and seal of a justice or justices

of the peace of the county where the cattle were severally and respectively purchased or brought; setting forth, that oath had been duly made by the respective owners that such cattle at the time of the purchase or removal, were sound and free from any distemper or infection; and that no distemper or infection were known to be among cattle at that time within five miles of the place whence they came; and shall likewise mention the mark and brands of the said cattle.

Every person or persons who shall drive any cattle into this state without such certificate or certificates as aforesaid, shall forfeit and pay for every steer, bull, cow, calf, or heifer, respectively, for which he shall have no certificate, the sum of forty shillings; to be recovered by a warrant before any justice of the peace of the county where such cattle shall then be, and be levied on the body, goods, and chattels of the delinquent or delinquents, for the use of the county: and every person driving cattle as aforesaid, is hereby required and directed to produce a certificate or certificates as aforesaid at the request of any person, a resident in the county wherein such cattle are; and upon his refusal so to do, on complaint thereof made to any justice of the peace in the said county, such justice is hereby empowered and directed to issue a warrant to bring such drover or drovers before him; who for every such refusal, shall forfeit and pay the sum of twenty shillings; and till the same is paid the said justice shall commit the offender to the jail of the county, or issue an execution against his goods and chattels, as such justice thinks most expedient; which forfeiture shall be applied to the use of the county, and accounted for at the next inferior court.

In case any cattle hereafter shall be suspected to have any distemper, any two justices of the peace and one freeholder are hereby empowered and directed to enquire into the same; and on due proof thereof made, shall make such order therein as may best tend to prevent the infection spreading.

No person whatever shall hereafter drive any cattle into this state between the first day of April and the first day of November in every year, from either of the states of South Carolina or Georgia, under the penalty of forty shillings for each and every head of cattle brought into this state contrary to the meaning of this act, to be recovered before any jurisdiction having cognizance thereof, by any person suing for the same, one-half to his own use, and the other half to the use of the state.

No person shall hereafter drive any cattle from those parts of this state where the soil is sandy and the natural produce

tions or growth of timber is the long leaf pine, into or through any of the highland parts of the state, where the soil or growth of timber is of a different kind, between the first day of April and the first day of November in every year, under the penalty of forty shillings for each and every head of cattle so driven, to be recovered and applied as before mentioned; nor shall any person hereafter within the said time drive any cattle from the highland parts of this state, into those parts where the long-leaf pine is the natural growth and production, under the like penalties, to be recovered and applied as aforesaid.

No person or persons shall hereafter drive any cattle from any part of the state through any other part thereof, without first obtaining or carrying with him or them a certificate or certificates, under the hands and seals of two justices of the peace of the county where such cattle were severally and respectively purchased or collected from range, accompanied with an affidavit or affidavits of the owner or owners of said cattle, setting forth the place or places where said cattle were purchased or had ranged as aforesaid, and describing therein the nature of the soil and growth of the timber on such place or places, and also that said cattle were at the time of purchase or removal sound and free from any infectious distemper. And if any justice shall grant such certificate, without an affidavit of the owner or owners as aforesaid, it shall be deemed a misdemeanor in office.

CERTIORARI.

A certiorari is a writ issuing from the superior courts directed in the name of the state to the judges or officers of inferior courts, commanding them to certify or to return the records of a cause depending before them to the superior court; to the end the party may have the more sure and speedy justice.

This is frequently done, to consider and determine the validity of indictments and the proceedings thereon, and to quash or confirm them as there is cause; or where it is surmised that a partial or insufficient trial will probably be had in the court below, in order to have the defendant tried in the superior court.

As a matter of right the court will grant it for the state, but may either grant or deny it at their discretion to the defendant.

It will not be granted after conviction, but for some special cause—as where the justices are doubtful what judgment to give; nor will it generally be granted at the instance of the defendant, to remove an indictment for any great misdemeanor, where that would tend to discourage the prosecution; nor after issue joined, or confession of the fact in the court below.

It lies in all judicial proceedings, in which a writ of error will not lie; and it is a consequence of all inferior jurisdictions erected by act of assembly, to have their proceedings returnable into the superior courts and consequently to justices of the peace, even in such cases which they are empowered by act of assembly finally to hear and determine; for the superintendency of that court is not taken away except by express words.

Such writ, when issued and delivered to an inferior court for removing any record or other proceedings, as well upon indictment as otherwise, supersedes the jurisdiction of such inferior court, and makes all subsequent proceedings therein entirely erroneous and illegal; unless the superior court remands the record to the court below, to be there tried and determined.

CHAMPERTY.

Champerty is a bargain with plaintiff or defendant, to divide the thing sued for between them, if they prevail at law; whereupon the champertor is to carry on the party's suit at his own expense.

This offence is punishable at the common law by fine and imprisonment. 2 *Inst.* 208. *Wood* 433.

And by statute it is enacted, that no one shall sell or purchase any pretended right or title to land, unless the seller hath received the profits thereof for one whole year before such grant, or hath been in actual possession of the land, or of all the reversion or remainder; on pain that both purchaser and seller shall each forfeit the value of such lands to the state and the prosecutor.

See *Arrest.*

CHEATS.

Cheats are such deceitful practices to defraud another of his known right, by means of some artful device, contrary to the plain rules of common honesty, as common care and prudence are not sufficient to guard against—as selling by false weights and measures, playing with false dice or the like, causing an illiterate person to execute a deed to his prejudice, by reading it over to him in words different from those in which it is written; or persuading a woman to execute a writing to another, as her trustee, upon an intended marriage, which contained no such thing, but a warrant of attorney to confess judgment; or by suppressing a will, and such like. These are punishable by fine and imprisonment, and sometimes with the pillory.

And by statute, if any man defrauds another of any valuable chattels, by colour of any false token or counterfeit letter, he shall be punished by imprisonment, pillory, or other corporal pain (except death) as the court shall direct.

See *Arrest.*

CHURCH—See *Public Worship.*

CLERGY—(BENEFIT OF.)

The benefit of clergy is a right to be discharged from the punishment of death for the first offence, in all felonies from which the benefit of clergy is not taken away by some statute or act of assembly, upon being burned in the hand and imprisoned for a year, or less time, if the judge thinks proper.

All citizens are entitled to it, woman as well as man; though the former are allowed it not by any express law in force in this state, but by indulgence now a long time shown, —perhaps by a tacit adoption of the statutes of 21 *J.* 1. c. 6. 3 & 4 *W.* & *M.* c. 9. and 4 & 5 *W.* & *M.* c. 24.

It is allowable in all felonies, whether new created or by common law, unless taken away by the express words of an act of parliament or act of assembly.

Where it is taken away from the principal, it is not of course taken away from the accessory, unless he be also particularly included in the words of the statute or act.

When it is taken from the offence (as in case of murder, buggery, robbery, rape, and burglary) a principal in the second degree, aiding and abetting the crime, is as well ex-

cluded from his clergy, as he that is principal in the first degree.

Where it is only taken away from the person committing the offence (as in the case of stabbing, committing larceny in a dwelling house, or privately from the person), his aiders, and abettors are not excluded; because the statute or act shall be construed literally.

He does not hereby again acquire a right to be restored to his goods, all of which he forfeited to the state by his conviction. After conviction, till he receives the judgment of the law by branding, or the like, he is to all intents and purposes a felon, and subject to all the disabilities and other incidents of a felon. But after burning or pardon he is discharged for ever of that and all other felonies before committed within the benefit of clergy, but not of felonies from which such benefit is excluded. Also, by the burning or pardon he is restored to all capacities and credits, and the possession of his lands, as if he had never been convicted.

But he shall not be admitted to his clergy a second time, after having once been admitted thereto.

If the party once admitted to his clergy deny that he is the same person that was before admitted thereto, issue must be joined; and it must be found upon trial that he is the same person, before he can be ousted of his clergy.

If a statute or act of assembly maketh a new felony, and takes away clergy, not generally, but in such or such cases, it is allowable in other cases—as if it be taken away from the party convicted by verdict, he shall have it if he stand mute. But if the statute or act enacts generally that it shall be felony without benefit of clergy, or that he shall suffer as in case of felony without benefit of clergy, this excludes it in all circumstances.

The indictment must precisely bring the party within the case of the statute or act, otherwise although the fact itself be within the statute and so appears upon the evidence, yet if it be not so alleged in the indictment, the party though convicted shall have his clergy.

If laid in the indictment as mentioned in the statute or act, yet if it appear in evidence, that though it be a felony, it is not so qualified as laid in the indictment, the jury should find him guilty of the felony simply, but not as laid in the indictment; and thereupon he shall have his clergy.

Where a statute only excludes the offence from clergy, indictment need not conclude against the form of the statute or act.

CLERK OF THE COUNTY COURT.

The clerk of the county court is appointed whenever a vacancy happens, by a majority of the justices of the county; and shall give bond in two thousand pounds, with sufficient security, payable to the justices of the court, for the safekeeping of the records and the faithful discharge of his duty; and shall renew the same as mentioned under title *Bonds*, or be removed.

He shall hold his office during good behaviour; and he and his deputy, if he has one, shall both take the oaths of allegiance and the oath of office; and he shall subscribe the same.

When any sheriff, constable, or clerk of any court within this state, shall by virtue of his office, receive any sum or sums of money for or on account of any person whatsoever, and shall not on application made to him pay the same, such person may give to such sheriff, constable, or clerk, ten days notice in writing, to be proved in the usual manner, to appear before some justice of the peace of the county to show cause why the justice should not grant judgment and issue execution for the same against him and his securities: and if such sheriff, constable, or clerk shall not appear before such justice, or if appearing, does not show sufficient cause to the contrary, it shall be lawful for such justice to grant judgment and award execution against such delinquent for the money due; provided the same does not exceed thirty pounds. *Acts* 1800, c. 18, & 1803, c. 1.

See *Cattle, Horses, and Hogs.*

COIN.

Counterfeiting any foreign coin, or uttering or passing the same knowing it to be counterfeit, is punishable as a great misdemeanor, by fine and imprisonment, and sometimes by the pillory; and instances have occurred, where the party was carted and whipped.

Any person endeavouring to utter false money, may be stopped and detained till a constable or officer can be procured, who must arrest and carry him before a justice of the peace to be examined; and if there be proof or pregnant circumstances that the uttering was wilful, he should be bound over to the superior court.

If false money be found in a man's hands, in any considerable quantity, and he be suspicious, he may be arrested and carried before a justice to be examined. 3 *Inst.* 18. 1 *Haw.* 43.

If any person or persons shall make or cause to be made, any counterfeit similitude or likeness of a Spanish milled dollar, English guinea, or any foreign coin of gold or silver, which is in common use and received in the discharge of contracts by the citizens of this state, or shall utter or pass the same knowing it to be counterfeit, the person or persons so offending shall, on the first conviction in any superior court of law in this state, receive thirty-nine lashes on his or her bare back; and on the second conviction, shall receive the same number of lashes and be imprisoned for a length of time not exceeding twelve months, and be branded on the right cheek with the letter C. And any person convicted in either of said superior courts of having in his or her possession any instrument for the purpose of making any such counterfeit similitude, shall receive thirty-nine lashes on his or her bare back, and be further liable to be fined at the discretion of the court in the sum of $500 and be imprisoned not more than twelve months. *Acts* 1811, c. 11.

See *Arres*, *Bail*.

COMMITMENT.

All persons not bailable, for which see *Bail*, and all such as are bailable, but refuse or neglect to give it when required, are committed to the county jail.

Wherever a justice is empowered by any statute or act of assembly to bind a person over, or to cause him to do a certain thing, and such person being in his presence shall refuse to be bound, or to do such thing, he may be committed to jail; there to remain until he shall comply.

The justice should discharge persons brought before him charged with any crime, if upon inquiry it manifestly appears either that no such crime was committed, or that the suspicion entertained of the prisoner was wholly groundless: otherwise he must be committed to prison or give bail.

The commitment must be in writing, in the name of the state or of the person who makes it, expressing his office or authority, and tested by him; and must be directed to the jailor or keeper of the prison. It should contain the name and surname of the party committed; if not known, he may be described by his age, stature, complexion, colour of his

hair, and the like. And it is safe, but not necessary, to set forth that he is charged upon oath. It should contain the cause with certainty,—as for felony, for the death of such a one, or for burglary in breaking the house of such a one. It must conclude aptly, as if for felony, to 'detain him until he be thence delivered by law, or by order of law, or by due course of law.' If grounded upon a statute or act of assembly, the conclusion should be, 'conformably thereto:' or if for contumacy, it should be, 'until he comply.' It must be under seal, and should set forth the place where made, and have a certain date of the year and place.

It is safest for the jailor, in every instance, to have the authority of some court, or magistrate, for discharging the prisoner.

COMMON LAW—See *Law.*

CONFESSION.

A confession of the defendant, taken upon an examination before a justice of the peace, or in discourse with private persons, may be given in evidence against the party confessing, but not against others. But in the latter case, it will not avail any thing in capital cases, unless corroborated by circumstances agreeing therewith.

CONSPIRACY.

Conspiracy is an agreement between two or more persons to indict an innocent man of felony, falsely and maliciously; who is accordingly indicted and acquitted. This is punishable by fine, imprisonment, pillory, and finding sureties for the good behaviour for such time as the court may order; or by one or more of them only, at the discretion of the court.—2 *Burr.* 1026.

But in such a case, and in all others, a conspiracy without further act, is indictable.—*Wood* 434. 3 *Burr.* 1321. 1 *Stra.* 193.

All confederacies whatsoever, wrongfully to prejudice a third person, are highly criminal;—as a confederacy or conspiracy to impoverish a man by indirect means, or to charge him falsely and maliciously with being the reputed father of a bastard child, or to maintain one another in any matter whether true or false, and the like.

The confederacy ought to be declared by some manner of prosecution in order to be made out—as by promises to stand by one another right or wrong; or by bonds for that purpose, or the like circumstances sufficiently indicating the same.

One person alone cannot be indicted for a conspiracy. If all the defendants are acquitted but one, that one must be acquitted too.

See *Arrest, Commitment, Bail, Slaves.*

CONSTABLE.

A constable by the common law is a conservator of the peace. He may in the name of the state, command affrayers to depart and to keep the peace. He may without a warrant commit to the stocks, &c. any that make any affray, or assault others, or threaten to beat or kill another, or are about to break the peace in his presence, till he can get assistance to carry the offender before a justice of the peace to be committed to prison if he will not find sureties. If the affray is over, he must have a warrant to carry the offender before a justice of the peace. If the affray is in a house, the constable may break into the house to see the peace kept. If such offenders fly into another county, he may make fresh pursuit and take them there. If an assault is made upon him, he may defend himself and justify the beating of another. If he happen to be killed in doing his duty, it is murder. He may command all persons to assist him to prevent a breach of the peace; and if any one refuses, he may be bound over to the county court and fined. He must execute warrants directed to him with speed and secrecy, and not dispute the authority if the justice of the peace has jurisdiction. But if the warrant be, to bring one before the justice to answer all such matters as shall be objected against him, and doth not contain the special matter, the warrant is unlawful and he ought not to execute it. Or if the warrant be to take up one for slander, or other cause, not within the jurisdiction, the constable is punishable if he executes it. He need not show his warrant being a sworn officer. If he lets one go, upon his promise to return, and he fail of his promise at the appointed time, the constable cannot retake him by virtue of the same warrant, because he was released by his consent. He is not bound to go up and down with an offender to get sureties, but he may keep him till sureties come to him, and

then the offender is at liberty to go to any justice of the peace provided it is not too far off, and the constable consents to it. The constable may carry the offender before what justice he pleases, if the warrant is not special, that is to say, to bring the party before the justice that signed the warrant. If a constable has a warrant to execute, and afterwards a *super sedeas*, that is, a command to stay or stop, comes from another justice, to whom the party, hearing of the warrant offered sureties before an arrest, the constable must not then execute it; if he does, it is false imprisonment. He may justify the detaining an offender a day, by verbal order of a justice without a warrant, the justice then not having opportunity to examine him. He may make a deputy. These are his powers at the common law. He hath also some others directed by statute or act of assembly, which will be noticed under their respective heads.

Constables are appointed yearly by the county court, at the court next after the first day of January, for the then next ensuing year and take an oath, which see under title *Oaths*. The person appointed, forfeits fifty shillings by neglecting or refusing to qualify within ten days after appointment, unless for good cause to be admitted by the justices; any one of whom may grant his warrant for the penalty; but notice of the appointment, signed by the clerk, must be served by the sheriff or preceding constable. Any one justice may administer the oath; and may appoint another constable on the death or removal out of the district of the former, till the next county court, and then the justices of the court shall continue him or appoint a new one. He is fineable at the discretion of the court, for not executing any precept to him directed. Any one may be appointed constable by a justice of the peace on a particular occasion; who shall be obliged to execute the precept if he can, in the absence or for want of a constable. He is exempted from working on roads; and is to pass all ferries when charged with runaways, together with his assistants, without paying ferriage. He shall give bond, payable to the governor in 500*l.* for the faithful discharge of his office. He may execute process upon any bay, river, or creek adjoining to his county, and make return thereof. When he has received money by virtue of his office, he shall, upon motion in the county court, grounded upon a previous notice of ten days, as also his sureties, have judgment and execution against him for the same: and he is liable to the same proceedings, though the time of his appointment is expired.

For remedy against a constable, to the amount of thirty pounds, before a justice—see *Clerk of the County Court.*

In case of judgment and execution by a justice, against the executors or administrators of a deceased, and they deny there are assets to pay the same, he shall levy on the lands, and make return thereof to the next county court, who shall issue *scire facias* against the heir, &c.

No commissioned officers, civil or military, nor members of assembly, nor any who has served in such station, nor any who has served as constable five years before, attorney, surgeon, or preacher of the gospel, are bound to serve.

See further, under *Arrests.*

CONVICTION.

Where a special power is given to a justice of the peace, by statute or act of assembly, to convict an offender in a summary way, without a trial by jury, it must appear that he hath strictly pursued that power, otherwise the proceeding will be void. There must be an information or charge:—he must be summoned and have notice of the charge, and an opportunity to make his defence; and the evidence against him must be such as the common law approves of, unless the statute or act specially direct otherwise. Then, if the person is found guilty, there must be a conviction, judgment, and execution directed and influenced by the special authority given by the statute or act; and in the conclusion, there must be a record of the whole, setting forth the particular manner and circumstances. Where penalties are to be recovered by action of debt, or by warrant as for a debt, before justices, there needs not the same formality.

CORN.

At common law, the stealing of corn growing is a trespass; for which the party may be indicted as for a misdemeanor, and fined and imprisoned.

If he cut it at one time, and then come again at another and take it away, it is felony.

But by act of 1811, c. 13, the stealing or feloniously taking and carrying away any growing, standing, or ungathered corn or maize, cotton, or rice, shall hereafter be held and deemed larceny. And every person who shall hereafter steal or feloni-

ously take, pluck, sever, and carry away any corn, maize, cotton, or rice growing, standing, or remaining ungathered in any plantation, field, or other ground, shall suffer punishment as in other cases of larceny.

See *Arrest.*

CORONER.

The 38th section of the constitution directs that there shall be a sheriff, coroner or coroners, and constables in each county in the state.

The county court, in each county, shall appoint two or more coroners within their county, where they think more than one necessary.

He shall execute all process civil and criminal, lawfully issuing, or judgments, orders, or sentences of any court within his county, where there is no sheriff; and be under the same rules and regulations, and subject to the same fines and forfeitures as sheriffs are by law, for neglect or disobedience of the duties aforesaid.

The coroner or coroners of any county, where there is no sheriff properly qualified to act, may hold the election for members of assembly; and shall give lists of the votes, and the number of ticket ballots, signed by him as sheriff; and shall do it under the same penalties.

He is chosen for life; but may be removed by being made sheriff; which is incompatible with the other.

His office and power are either judicial or ministerial; but principally judicial; and consists—

First, in enquiring when any person is slain, or dies suddenly, or in prison, concerning the manner of his death; and this must be upon view of the body; for if the body be not found, the coroner cannot sit. He must sit at the very place where the death happened; and his inquiry is made by a jury from the county, over whom he is to preside. If any be found guilty by the inquest, of murder, he is to commit to prison for further trial:—and is to enquire concerning those goods and chattels which are forfeited thereby; and must certify the whole of this inquisition to the superior court, or the court of oyer and terminer, if any be held. He is also to enquire concerning shipwrecks, and certify whether wreck or not, and who is in possession of the goods. Concerning treasure found, he is also to enquire who were the finders, and where it is; and whether any one be suspected of

having found and concealed a treasure,—and that may be perceived when one liveth riotously, haunting taverns, and hath done so of long time; whereupon he might be attached and held to bail upon this suspicion only.

Where just exception can be taken to the sheriff for suspicion of partiality (as that he is interested in the suit, or of kindred to either plaintiff or defendant) the process there must be awarded to the coroner, instead of the sheriff, for the execution of the state's writs.

When notice is given to the coroner of any such death as aforesaid, or he is acquainted with the suspicion at least of a violent death, he is to issue his precept to the constable or constables of the county, to return a competent number of lawful men, usually twenty-four, to appear before him at such a place, on such a day, to make an inquisition touching that matter. If the constable makes no return, or the jurors do not appear, though returned, their defaults are to be returned to the coroner, and the superior court will amerce them.

The jurors are to be at the least twelve, and the jury appearing, are to be sworn and charged by the coroner, to enquire, upon view of the body, how the party came by his death. If the body be interred before he come, he may dig it up; and this he may do lawfully within any convenient time, as in fourteen days: and he must record the names of those that buried it. If the body cannot be viewed, he can do nothing;—but the justices of the peace shall enquire thereof.

The jury being sworn, he is to charge them to enquire the manner of the killing, whether by himself or any other, or by some mischance; and to present the same. And he may send his warrant for witnesses to appear, taking their examination in writing under their hands.

Immediately upon these things being enquired, the body shall be buried.

He ought also to enquire with respect to those who die in prison, whether they died by violence or any unreasonable hardships; for if a prisoner by duress of the jailor, comes to an untimely death, it is murder in the jailor.

If by the inquest any person be found guilty of murder or manslaughter, or as accessory before the fact, he must put in writing the effect of the evidence given to the jury before him, being material, and shall bind over the witnesses to the next superior court; and shall certify the evidence, the recogni-

zance, and the inquisition, into the superior court, on pain of being fined: and he shall commit the felon, if not bailable.

He must execute his office in person, and not by deputy.

For neglecting his duty, he may be indicted and fined.

COUNTERFEITING.

Counterfeiting any of the bills of credit emitted pursuant to the act of 1783, c. 1, printing, writing, engraving, or by any ways and means: or any part, letter, word, name, emblem, or device of the same; or the making or constructing any die, press, type or other instrument for emitting or counterfeiting any of the said bills of credit; or any part, word, letter, name, emblem, or device of the same, except by authority of law (or in case where such may be signed in order to bring suspected persons to justice) or altering or defacing any of the said bills with intention to change the value or denomination thereof—is punishable, for the first offence, by standing in the pillory three hours, and having the right ear nailed to the pillory and cut off, and by receiving thirty-nine lashes on the bare back, and by being branded with a red hot iron on the right cheek with the letter C, and on the left cheek with the letter M; which brand to be at least one inch in length and three-quarters of an inch in breadth; and by being imprisoned at the discretion of the Court, not exceeding one year, and by a forfeiture of all the offender's goods and chattels, lands and tenements, to the state, which he had at the time of the offence committed.

Knowingly to utter or pass any counterfeit likeness of any of the said bills, is punishable, for the first offence, by standing in the pillory one hour, having one ear cut off, thirty-nine lashes on the bare back, imprisonment at the discretion of the court, and a forfeiture of one-half of the offender's property to the use of the state; and upon a second conviction, death without benefit of clergy.

The same penalties are inflicted for counterfeiting any of the comptroller's, auditor's commissioner's, colonel's, or any other certificates issued by public authority; or any part, word, or letter of the same, with intention to defraud and deceive. Also the altering or defacing any such certificates, with intention to change the value or denomination thereof. Also the knowingly passing or offering to pass, or presenting as a voucher, any counterfeit likeness of such certificates.

The same offences against the bills of credit emitted pursuant to acts of 1785, c. 5, as are above enumerated in respect of the currency pursuant to the acts of 1782, c. 1, are capital, or felonies without benefit of clergy, upon the first conviction.

Erasing altering, or counterfeiting any note or notes of the Bank of North-America, is capital, or felony without benefit of clergy.

To counterfeit, or cause to be counterfeited, or willingly to aid in counterfeiting any bill or note of the State Bank of North-Carolina, or any order or check on the said bank, or any cashier thereof, or falsely to alter, or cause to be falsely altered, or willingly to aid in falsely altering any bill or note of said bank; or to pass or attempt to pass, as true, any false, forged, or counterfeited bill or note of said bank, or check or order upon the same, or the cashier thereof, knowing the same to be falsely counterfeited: or falsely to alter any bill or note of said bank, or order, or check on the same, or any cashier thereof, knowing the same to be falsely altered with intention to defraud the said corporation or any other body politic or person, is felony: and the offender therein, upon conviction, shall be imprisoned and kept to hard labour for a period not less than three years, nor more than ten,—or shall be imprisoned not exceeding ten years, and fined not exceeding $5000. *Acts* 1811, c. 1.

If any person shall, knowingly, by means of any counterfeit paper, in writing or in print, or by any false token or pretence whatsoever, obtain from any person or persons or corporation within this state, any money, goods, property, or other thing of value, or any bank note, check, or order for the payment of money issued by or drawn on any bank or other society or corporation within this state, or any of the United States; or any treasury warrant, debenture, certificate of stock, or other public security; or any order, bill of exchange, bond, promissory note, or other obligation, either for the payment of money or the delivery of specific articles, with intent to cheat or defraud any person or corporation of the same, such offender shall be held guilty of fraud and deceit, and being thereof convicted in any court of competent jurisdiction, shall be punished by fine, and imprisonment not exceeding twelve months, putting into the pillory, public whipping not exceeding thirty-nine lashes on his or her bare back, all or any of them at the discretion of the court, due regard being had to the nature and circumstances of the offence.

For COUNTERFEITING COIN, &c.—See *Coin*.

COUNTY COURTS.

The justices or any three of them, in the county court, have jurisdiction over all causes whatsoever, at the common law, within their respective counties; [perjury and such felony and criminal causes, where the judgment, upon conviction, is for the loss of life, limb, or member, excepted;] and of all indictments for assaults, batteries, and petit larcenies, breaches of the peace, and other misdemeanors of what kind soever of an inferior nature: of all actions of detinue, trover, and on penal statutes. Suits for filial portions, legacies, and distributive shares of intestates' estates, and all other matters relating thereto; and the probate of all wills, and granting administrations upon the estates of all persons residing at the time of death in their county, or having a fixed place of residence therein. But no suit for any sum under thirty pounds shall be returned in the first instance, into the county court, or any other court. This court may be continued by adjournment, if necessary, for six days.

Should any sheriff, clerk, entry-taker, or ranger be permitted to officiate as such, without having first qualified and given bond as the law requires, the justices who shall sit on the bench, or are in the court at the time of the appointment, shall be considered bound as the securities of such officer, in the same manner as though they had entered into bond for that purpose. *Acts* 1809, c. 19.

Where *certioraries* are directed to the county courts, the clerk of the court is required to take security in the same manner and under the same regulations, that security is taken on appeals from the county to the superior court.

COUNTY TREASURER OF PUBLIC BUILDINGS.

The county treasurer of public buildings shall be appointed annually by the court at the same term the sheriff is appointed. And at the same term annually, he shall settle his accounts with the court; setting forth therein the monies received, and at what time; the sums expended, to whom, for what use, and at what time:—and on failure to do so, his successor, giving ten days previous notice, shall enter up judgment in the county court, and have execution awarded for all sums of money he has received as treasurer of public buildings, with interest

from the day of receiving them. Also where a balance appears upon settlement, the same proceeding shall be had for that.

COUNTY TRUSTEE.

The court shall appoint one county trustee, annually, at the court to be held next after the first day of July. He shall give bond with sufficient sureties, for the faithful discharge of his duty. And in case of vacancy, the court may appoint another until the next annual appointment, under the same rules.

He shall sue for, recover, and receive from all persons all monies in their hands due and payable for the use of the county; and shall receive from the sheriff or collectors all monies they are liable for; and shall apply the same as the court shall direct. He shall account and settle with the court annually, at the term next after the first day of June, for the whole of his receipts and expenditures, under the penalty of 200*l.* He shall collect all stray money, and sue for the same if not paid, and shall have six per cent. thereupon.

He shall settle with the sheriff or collectors according to number, beginning at the least number. And where there is no trustee, the court shall settle with them in like manner.

He shall annually call on the sheriff of his county, for the payment of all monies in the hands of said sheriff that may be due to him; and if the sheriff fail to account for and pay the same, it shall be the duty of the trustee, at the first court of his county after the first day of February in each and every year, to move for judgment against such sheriff, after giving ten days previous notice; and the court shall thereupon award immediate execution for the amount of the tax list furnished the sheriff, or for such part as shall appear to be due; and such sheriff shall, over and above his arrearages, forfeit and pay fifty pounds, to be applied to the use of the county. And if the trustee shall fail to comply with the requisites of this act, he shall not only be liable for the monies in his possession, but shall be subject to the penalty of fifty pounds,—one-half to the informer and the other half to the use of the county. *Acts* 1808, c. 21.

All fines, forfeitures, amercements, and tax fees, on suits and attornies licences, as well in the superior as the county courts, shall be accounted for and paid to the county trustees, for the purpose of defraying the costs of state prosecutions and the contingent expense of the county.—*Acts* 1809, c. 11.

And it is the duty of the sheriffs to settle with the county trustee, for the taxes on unlisted property, under the same rules as they are bound to settle with the comptroller.—*Acts* 1811, c. 20.

The court may allow him a reasonable salary out of the county monies.

CRIMINALS.

According to an act of Asssembly passed in 1715, no person shall be committed to jail for any criminal offence, until he shall be examined before some magistrate, who, if the party shall be bailable, shall admit him to bail, and shall record the examination of the party with the full matter in evidence, both for and against him, with all concurring circumstances, and shall bind over the informer, in recognizance with good security, to appear and prosecute; and also bind over the witnesses to give evidence to the next superior court to be held for the district.

The record of the proceedings must also be returned to such court, under penalty of five pounds, for every neglect.

If a witness refuses to answer, on oath, or to enter into recognizance, he may be committed, or bound to good behaviour.

Witnesses for the prisoner are to be summoned, at his request, by the sheriff, by subpœnas issuing from the clerk of the court where he is to be tried.

In all trials for capital offences, prisoners may have counsel, and where they have not, the court is of counsel for them.

See *Bail and Commitment.*

DEBT AND DEBTOR.

All debts and demands of thirty pounds and under, for a balance due on any specialty, contract, note, or agreement, or for goods, wares, and merchandize sold and delivered, or for work or labour done, or for specific articles, whether due by obligation, note, or assumpsit, or for any judgment which may have been granted over twelve months, by a single justice of the peace, and no execution having issued thereon, or for any forfeiture or penalty incurred by virtue of any act of the General Assembly, are hereby declared to be cognizable

always, that nothing herein shall prevent the plaintiff from taking out execution at any time before the same shall be stayed or an appeal granted. But in such case, if the security shall be given as aforesaid, the execution shall be returned to the justice who issued it and shall not be acted on by any officer. And the officer or other person who has any such execution shall, on due notice given to him in writing from the justice who granted the execution, deliver up the same, or be liable to the action of the party grieved.

Where appeals shall be granted from the judgment of a justice, the acknowledgement of the security, and subscribed with his or her proper hand-writing, attested by the justice, shall be sufficient to bind the security to abide by and perform the judgment of the court. And the justice is authorised and required, on application of either of the parties, to issue subpœnas, directed to the sheriff, or other lawful officer, in any county in this state, for witnesses to appear and give testimony at the court to which such appeal is returnable. See *Appeals*.

All bail taken according to the directions of this act shall be liable to the recovery of the plaintiff; but the plaintiff, after final judgment, shall not take out execution against the bail, until an execution against the body of the defendant be first returned by the sheriff, constable, or other officer, that the defendant is not found in his county, and not until a notice in writing issued against the bail by the justice who has possession of the papers in the original suit, hath been made known to the bail. And after the return of such execution against the principal, and notice against the bail, execution may issue against the principal and bail, or any of them, or any of their estates, unless the bail shall make it appear that the principal is dead, or that the judgment has been satisfied, or unless the bail shall surrender the principal at or before the return of such notice to the officer who served the notice. In which latter case the justice shall commit the principal to the jail of his county until he shall satisfy the judgment and costs; and for serving such notice the officer shall be allowed four shillings.

Such bail shall, at any time before final judgment had against him, have full power and authority to arrest the body of his principal, and secure him until he shall have an opportunity of surrendering him in discharge of himself to the officer who made the arrest or served the notice; and such officer is required to receive such surrender and hold

the body of the defendant in custody as if bail had never been given.

All warrants shall be made returnable on or before thirty days from the date thereof (Sundays excepted) and not after. And it shall be the duty of the sheriff, constable, or other officer to whom any warrant may be directed, to execute and return such warrant for trial on or before such day, if the person or persons therein named shall be found in his county.

Executions issued by a justice of the peace against the estate of any person or persons, shall be directed to the sheriff, constable, or other lawful officer, commanding him that of the goods and chattels of the party cast, he make such sum or sums of money therein mentioned, or for want of such goods and chattels to satisfy said execution, then he levy on the lands and tenements of such person or persons, and make return thereof to the justice who issued the same, setting forth on the execution the money he has made of the goods and chattels, and what lands and tenements he has levied on, where situate, on what water course, and whose lands it is adjoining: And the justice to whom the return is made shall return such execution, with all other papers on which the judgment was given, to the next court to be held for his county; which land shall, by order of said court, be sold by the sheriff of the said county, or so much thereof as may be sufficient to satisfy such judgment, in the same manner as real property is sold by writs of *fieri facias* or *venditioni exponas* issuing from such court; and the clerk of the court where such papers are returned shall, in a well bound book, kept for that purpose, record the whole of the papers and proceedings had before the justice; for which he shall be allowed the same fee as for entering a judgment in any other suit.

When any execution shall issue to a sheriff, constable, or other officer, in virtue of a judgment obtained before any justice of the peace, and the person or persons against whom such judgment may be obtained, shall remove him or themselves into any other county within this state, and the sheriff or other officer cannot find any property whereon to levy said execution, then and in such case the said sheriff or other officer shall return such execution to the next court to be held for the said county, and the plaintiff on application shall be entitled to an execution for the whole or any part of said execution which remains unpaid by the return of such officer; and the clerk, by order of said court, shall make a record of the same, and issue execution to the county where

the defendant or defendants reside, in the same manner, and under the same rules as in cases of judgments obtained in said courts.

Any justice of the peace is hereby authorised and required, on application of either plaintiff or defendant named in any original process issued by a single justice, to direct the sheriff, constable, or other lawful officer, by an order in writing on the process, to summon witnesses to appear and give testimony in such suit at the time and place appointed for trial; and such witnesses failing to appear and give evidence, shall forfeit and pay the sum of two pounds current money to the party at whose instance he was summoned, and further be liable to the action of the party aggrieved, for damage sustained for his non attendance; which fine shall be recovered before any justice of the peace, unless such witness on affidavit or otherwise, shall show sufficient cause to the contrary; subject, nevertheless, to an appeal to the county court as in other cases.

The deposition of any person who is an inhabitant of another county or state, other than that in which any suit may be depending on a warrant before a justice of the peace, shall be admitted on trial of such warrant, to be read in evidence. Provided always, that either plaintiff or defendant shall, in cases respecting depositions, be governed by the same rules, regulations, and restrictions, as are used in taking depositions in other cases in the courts of law within this state, so far as respects time and notice: and provided also, that such depositions may be taken by one justice of the peace, when the adverse party may attend and cross-examine.

It shall and may be lawful for any person having a judgment or execution against any person from a justice of the peace, and the said defendant has no property in the county wherein the same may be levied, to return the execution to the clerk of the court of the county in which judgment was obtained out of court; and it shall be the duty of the clerk to certify under seal, the justice or justices who gave judgment was an acting justice or justices of said county; on which certificate any justice or justices in any other county in this state shall and may award execution for the sums therein expressed, against such defendant or defendants; any law to the contrary notwithstanding.

Where judgment shall be had and execution not issued within twelve months thereafter, it shall be lawful to sue for and recover the same by warrant, before a justice of the peace, and that the former judgment shall be evidence of the

debt, subject to such deductions as the defendant may make appear on trial to have been paid, in full or in part of said former judgment.

A justice of the peace has power, upon sufficient cause shown on oath, by either plaintiff or defendant, their agent, or attorney, to postpone from time to time, or continue for trial, any civil matter or case that may come before him; provided such postponement or continuance shall in no case exceed thirty days;—and it shall be lawful for any justice of the peace to act on said postponement or continuance, the original date of the warrant exceeding thirty days notwithstanding.

All judgments given by a justice of the peace shall bear six per cent interest on the original sum, until the same shall be actually paid or otherwise settled.

Whenever it shall happen that judgment shall be entered against either plaintiff or defendant, he, she, or they not being present, at any time within ten days after such judgment, the person or persons against whom such judgment hath been given, on making oath before any justice of the county where such judgment may be entered, that he, she, or they was or were prevented from attending on the day of trial by bodily infirmity, mistaking the day of trial, or other sufficient cause, and that he, she, or they are likely to be injured by such judgment, it shall be lawful for such justice to grant an appeal to the next county court, or stay of execution, on such person or persons entering into bond with sufficient security, as in other similar cases; and it shall also be the duty of such justice to give to the party craving such appeal, a written order to the constable, or other person having such judgment in his or her hands, commanding him to return said judgment, together with such other papers and documents as may be in their hands relative to such judgment, to him the said justice, before the next county court; and also commanding said officer to give notice to the party in whose favour such judgment hath been given, of an appeal being granted thereon;—and that it shall be the duty of said justice, on receiving such judgment and other papers, to make return thereof, together with the appeal bond and affidavit of the party craving such appeal, to the next ensuing court of his county, to be tried as other appeals from justices' judgments.

Whenever a judgment shall be given in the absence of either plaintiff or defendant, by any justice of the peace, whether execution hath been issued or not, on application of such absent party, his or her agent, or attorney, within ten

days after the date of said judgment, to the justice who awarded the same, on sufficient cause shown on oath or affirmation, why he, she, or they could not attend on the day of trial, it shall be the duty of said justice to issue his order to the plaintiff, defendant, or other officer (as the case may require) in possession of the papers relative to the suit, to forbear any other proceedings thereon, and immediately to bring the same before him or some other justice for reconsideration, provided that the applicant shall give sufficient security for his appearance. It shall also be the duty of the justice aforesaid to issue his summons, directed to some proper officer, to cause the parties, with their witnesses, to appear before him or some other justice, at such time and place, not exceeding thirty days, as he may think proper, where the case shall undergo a fair investigation, and be subject to the same proceedings as if it had never been acted on; and the officer to whom the summons may be directed, shall receive for his trouble in executing the same, the same fees he is entitled to for summoning witnesses; to be taxed on the party at whose instance it issued.

All executions issued by a justice of the peace shall be made returnable in three months from the date of said execution; and when any execution shall be returned, not fully satisfied and dicharged, it shall and may be lawful for any justice of the peace for said county to issue another execution for the sum so remaining due on the former execution.

If any person, under any pretence whatever, shall bring a suit in any of the courts of this state, for any sum under thirty pounds, which is cognizable before a single justice, unless the principal and interest shall exceed the sum of thirty pounds, this act may be pleaded in abatement thereof.

For remedy against sheriffs, constables, and clerks of county courts, for monies received by them,—see *Clerk of the County Court.*

For fraudulent conveyances and concealment of property—See *Fraud.*

Any person or persons who have paid any sum or sums of money for or on account of those for whom they became surety, upon producing to the county court, or any justice of the peace who may have jurisdiction of the same, a receipt, and that an execution has issued, and that he has satisfied the same, and making it satisfactorily appear by indifferent testimony that he has laid out and expended any sum or sums of money as the security of any person, may move such court or justice of the peace, as the case may be, for judgment

against his principal for the amount of the sum which he has actually laid out and expended; a citation previously issuing against the principal to show cause why execution should not be awarded; and should not the principal show sufficient cause to the court or justice of the peace, such court or justice may award execution thereon against the goods and chattels, lands and tenements of the principal.

When any person who has resided six months or more in any county of this state, shall be about to remove out of the same, either by land or water, it shall be his duty to advertise his removal in at least three public places of the county, ten days previous to his removing: one of which advertisements shall be set up at the door of the justice of the peace to whom such person may intend to apply for a certificate of his having so advertised, or at such other public place on the premises of said justice as he may direct. And if any person or persons shall remove, or knowingly assist to remove any debtor or debtors out of the county in which he shall have resided for the space of six months or more, who shall not have advertised himself in manner aforesaid, and shall have procured a certificate of the same from under the hand of some justice of the peace of the county, then such person so removing, or knowingly assisting to remove such debtor, shall be liable to pay all debts which the person so removing might justly owe in the county from which he was removing; which debts may be recovered by the person legally entitled thereto by an action on the case; provided suit shall be commenced for the same within twelve months from the time the proof of such removal shall come to the knowledge of the person to whom the debt was due.

For the limitation of time in bringing other suits—see *Limitation.*

A warrant may be general or special. General, to appear before him or any other justice. Special, before himself, at a day and place certain, limited in such warrant. But it will be good discretion in a justice not to grant a special warrant without any good reasons.

When the officer serves a general warrant, he may carry the defendant before any justice he pleases, and must there make return of the warrant executed. But a special warrant he must return to the justice who granted it, and carry the defendant before him at the day and place therein commanded.

If the defendant fails to appear at the day and place appointed, judgment may be given against him by default, unless reasons be shown to the justice for his non-attendance,

as sickness or some inevitable hindrance: in which case the cause may be adjourned to another day, or to another day and place.

Upon every judgment or dismission, the party in whose favour it is, must have costs.

Executions against the body, or against the goods and chattels, lands and tenements, may be issued by a justice of the peace after judgment.

If the writ against the body be executed, the officer must carry the defendant to the county jail, there to remain till the debt be satisfied, or until discharged by the creditor or by law. If he suffer him to go at large in the smallest degree, it is an escape, and subjects the officer to answer the whole debt.

If two *fieri facias*, that is, executions against the property, be delivered to the officer against the same person, that which is first dated shall be first satisfied.

If an execution of a later date is first delivered, and he seizes by that, and afterwards there comes another execution of a former date, that ought to be first satisfied.

If only part of the debt be levied on the *fieri facias*, or execution against the property, a *capias ad satisfaciendum*, or execution against the body, may issue for the residue.

Also, if there are no goods to be found, or not to be come at without breaking doors, the *fieri facias* may be returned, and a *capias ad satisfaciendum* may issue.

If there come two executions of the same date, that should be first satisfied that is first delivered.

See *Appeals*, *Attachment*, *Book-Debts*, *Evidence*, *Executions*, *Religious Societies*, *Offices*, *and other apt Heads*.

Warrant for Debt.

State of North-Carolina, Wake County.

To the Sheriff or any Constable of the said County, or other lawful Officer.

Whereas, A. B. hath complained before me, C. D. one of the justices of the peace in and for the said county, that E. F. of the said county, planter, is justly indebted to him, the said A. B. in the sum of , current money of this state, by bond, [note, or account, &c: as the case may be] and delays payment thereof. These are therefore to command you to take the body of the said E. F. if to be found in the said county, and bring him before me or some other justice of the said county, at , in the said county, on the day of next, to answer the said complaint; when and where do you return how you have executed this warrant.

Given under my hand and seal the day of , in the year of our Lord

C. D.....(seal.)

And you are further ordered to summon G. H. and I. J. as witnesses for the [plaintiff or defendant, as the case may be] to appear and give testimony in the above suit, at the time and place appointed for trial.

C. D....j. p.

When the warrant is for the penalty of a statute or act of assembly, the time, place, and manner of committing the breach, should be stated with much precision, and the statute or act referred to with certainty.

Form of a Judgment for the Plaintiff.

State of North-Carolina, Wake County.

At the house of , in the said County, the day of , in the year of our Lord

A. B. *v.* C. D.....debt.

The aforesaid parties appeared before me, one of the justices of the peace for the said county, pursuant to a warrant issued for that purpose, dated the day of , last past; and the said complaint being now heard, and the evidences and witnesses being also fully heard and examined: Therefore, it is considered by me, that the said A. B. do recover against the said C. D. the sum of , together with the costs incurred in and about the prosecution of the said warrant.

Judgment for twenty-five pounds, with interest thereon till paid.
Constable's fees.....For serving the warrant, - - - 4*s*.
summoning two witnesses, - 4*s*.

Or, if interest be calculated and included in the judgment, as it should be if any be due, then, with interest on the sum of twenty-two pounds ten shillings (the original debt) till paid.

By Confession.

State of North-Carolina, Wake County.

At the house, &c. [as above]

The aforesaid C. D. appearing before me, doth acknowledge the plaintiff's demand, in manner and form as he hath complained against him in and by the said warrant. Therefore it is considered that the said A. B. do recover against the said C. D. his said debt of pounds, also pounds for his interest accrued upon the said debt, with costs of suit.

If the Defendant does not appear:

State of North-Carolina, Wake County.

At the house, &c. [as above.]

A. B. *v.* C. D.

The aforesaid plaintiff appeared before me, one of the justices of the peace of the said county, and the said C. D. although solemnly called,

doth not come nor say any thing in bar of the said complaint; and the said A. B. having sufficiently proven before me the said debt and amount thereof. Therefore it is considered, &c. [as first above.]

Judgment for the Defendant.

State of North-Carolina, Wake County.

At the house, &c. [as above, till you come to these words, "therefore,"] &c.

Therefore, it is considered that the aforesaid A. B. take nothing by his warrant aforesaid, and that the aforesaid C. D. go thereof without day; and also that the aforesaid C. D. do recover against the said A. B. the sum of , for his costs and charges, by him about his defence in this behalf sustained; and that execution issue upon the same.

If the Plaintiff does not appear:

State of North Carolina, Wake County.

At the house, &c.

A. B. *v.* C. D.

The aforesaid defendant appearing before me, one of the justices of the peace of and in the said county, pursuant to a warrant issued against him at the instance of the said A. B dated the day of last past, at the prayer of the said defendant, the said A. B. was solemnly called and did not appear, but made default. Therefore, it is considered, that the said A. B. do take nothing by his warrant aforesaid, and that the said C. D. the defendant, go thereof without day; and that the said C. D. do recover against the said A. B. his costs by him expended and incurred in defence of the said arrest, which costs do amount to pounds, &c.

If the party appeal, the justice should add—

From which judgment the defendant [or plaintiff] appeals, and gives L. M. and N O. for sureties, who hereby acknowledge themselves to be such.

This acknowledgment should be signed by the sureties and attested by the justice.

If a stay of execution be granted, the entry should be thus—

On which judgment, the defendant prays the stay of execution for days, according to law, he giving L. M. and N. O. sureties for the same, who hereby acknowledge themselves to be such.

This is to be signed and attested as in the case of appeal.

Execution against the Property.

State of North-Carolina, Wake County.

To the Sheriff, Constable, or other lawful Officer, of and within the said County.

These are to command you that of the goods and chattels of E. F. if to be found within the said county, you cause to be made the sum of pounds, which A. B lately recovered against him, before C. D. one of the justices of the peace for the said county, at the house of , in the said county, on the day of last past, for his debt and costs by him incurred about his warrant in this behalf; and do you render the said monies to the said A. B. for his debt and costs aforesaid; and if there are not goods and chattels of the said E. F within the said county, enough to satisfy the debt and costs, then, for the deficiency, do you attach and levy upon the lands and tenements of the said E. F. within the said county, for the said deficiency; and make return to me of this precept, thereon certifying what monies you shall have made of the said goods and chattels, and what lands and tenements you shall have levied on as aforesaid, where the same are situated, on what water course, and whose lands the same do adjoin, on or before the day of . Herein fail not.

Given under my hand and seal, the day of , in the year of our Lord .

G. F.....j. p. (seal.)

Execution against the Body.

State of North-Carolina, Wake County.

To the Sheriff or any Constable of said County, or other lawful Officer.

These are to command you to take C. D. of , in the said county (if to be found in your county) and him safely keep, so that you have his body before me, D E. one of the justices of the said county, at , on the day of next, to satisfy A. B. the sum of , which the said A. B. lately at , in the said county, before , one of the justices of the said county, hath recovered against him; and also the sum of , which to the said A. B. before the same justice, were then and there adjudged for his costs in that warrant expended and incurred; and have you then and there this writ. Witness the said D. E. the day of , in the year of our Lord .

D. E.....(seal.)

Execution for the Defendant.

To satisfy D. E, pounds, which to the said D. E. lately at the house of , in the said county, before , one of the justices of the said county, were adjudged for his costs about his defence in a certain warrant issued at the instance of the said A. B. expended and incurred; and have you, &c. &c.

Notice against the Bail.

State of North-Carolina, Wake County.

To the Sheriff or any Constable of said county, or other lawful Officer.

Whereas, A. B. lately at the house of , in the county of Wake, on the day of , in the year of our Lord , before , one of the justices of the peace of and in the said county, recovered against C. D. pounds debt, and costs, by him about his warrant in that behalf expended and incurred. And although judgment thereof is given, yet execution for the debt and costs aforesaid, remains to be executed. And whereas A. A. late of the said county, planter, and A. E. late of the said county, planter, on the day of , in the year of our Lord , became surety and special bail for the said C. D. in and by a bond for that purpose duly executed and delivered to , one of the constables of the said county, upon the execution of the said warrant aforesaid; and the said C. D. hath not paid the said debt and costs, nor hath he rendered himself to prison for the same, nor hath been surrendered by his said bail for that purpose. These are therefore to command you to give notice to the said A. A. and A. E. to be before me, one of the justices of the peace of the said county, at the house of , in the said county, on the day of , next, to show if they have or can say any thing why the said A. B. ought not to have his execution against them for the debt and costs aforesaid.

Given under my hand and seal, the day of , in the year of our Lord .

G. H.....(seal.)

Judgment on the Notice.

State of North-Carolina, Wake County.

At the house of , in the said County, on the day of in the year of our Lord .

A. B. the plaintiff named in the said *scire facias*, appearing before me, prayed execution against the said A. A. and A. E. for the said debt of and costs, according to the form of the bond in the said notice mentioned; and the said A. A. and A. E. also appearing before me, and alleging, &c. [here specify what they say] and the allegations aforesaid, and also the evidences and witnesses of the said parties relating thereto, being here before me and fully understood. Therefore it is considered that the said A. B. have execution against the said A. A. and A E. for the debt and costs aforesaid.

DEEDS—See *Grants and Deeds.*

DEER—See *Hunting.*

DEPOSITIONS.

When any person who may be a witness in any cause in a superior or county court, shall reside out of this state, or shall, by reason of age, bodily infirmity, or any other cause, be incapable of attending to give his testimony in court, oath thereof being made, or the truth of the matter otherwise appearing, the judge or judges of the court wherein such suit is depending, shall and may by commission empower such and so many persons as may be thought necessary to take the deposition of such witness; which being duly taken and returned as hereinafter is directed, shall be received as legal evidence.

If any person who may be a witness in any cause depending in any of the said courts, shall be under the necessity of leaving this state before such cause is to be tried, or even before the same is at issue, or shall be in a dangerous state of health, upon oath thereof made before any justice of the peace of the said court, such justice may order the clerk of the court where such cause is pending, to issue a commission to one or more persons, to take the deposition of such witness; the following notice being first given to the adverse party, of the time and place when and where such deposition is to be taken:—to wit. in all cases where he, she, or they do not reside or is or are not more than ten miles distant, three days; in all other cases, one day more for every additional ten miles which the said party or parties may be distant from the place of taking the same.

Commissions to take testimony may issue from any court of equity in the state, directed to any two justices of the peace, who shall have all the powers of commissioners of chancery. Provided that no such testimony shall be taken until at least twenty days' notice of time and place be given to the opposite party, unless the court for sufficient reasons should appoint any other limited time for the notice.

Any two justices of the peace may take depositions to be read as evidence in the trial of suits by petition, in the same manner and under the same rules and regulations as depositions are taken to be read on the trial of suits in equity.

The deposition of any person who is an inhabitant of another county or state, other than that in which any suit may be depending on a warrant before a justice of the peace, shall be admitted on trial of such warrant to be read as evidence. Provided that the party taking the same be governed by the same rules, regulations, and restrictions as are used in taking

depositions in other cases in the courts of law within this state, so far as respects time and notice; and such depositions may be taken by one justice of the peace, when the adverse party may attend and cross-examine.

As to the manner of taking depositions, let the following regulations serve as a general guide:

When a commission is delivered to those appointed in it, they, or he if but one, should issue a subpœna, directed to the sheriff or constable commanding him to summon the witness or witnesses named in the commission, to attend at the day and place mentioned in the notice, to give evidence between the parties named in the commission.

If the witness refuses to be sworn, the commissioners or commissioner may commit him to the common jail, there to remain until he shall be willing to give testimony in such manner as the law directs.

If the witness appears, then require the party in whose behalf the deposition is to be taken, to produce a copy of the notice served on the adverse party; and also the rule or order made in the court for taking such deposition; and if it appear such notice has been served the length of time mentioned in such order, and that the notice has specified the day and place then present for taking the same:

Then, if both parties be present, or their agents, proceed to take the deposition; or if only one be present, then wait till the latter part of the day, if only the day be specified in the notice; but if the notice specify certain hours of that day, then wait as late as you can, so as to give yourself time enough to take the deposition; and then proceed to take it.

If both parties are present, specify the same in the caption of the deposition thus:

Pursuant to the annexed commission to us [or to me] directed, at the house of such a man, in such a county, and on such a day, [or between such and such hours of such a day,] both parties being present, namely, such a one and such a one, [or such a one agent or attorney for such a one,] I [or we] proceeded to take the following deposition of A. B. being of such an age, who having been first sworn upon the Holy Evangelists, [or with an uplifted hand,] or having first affirmed in due form of law to depose the truth, the whole truth, and nothing but the truth, between the said parties named in the commission, deposeth and saith as follows,—to wit, [as the witness swears.]

Here put down every thing material the witness says; and after he is done, then call upon the adverse party to cross-examine him; and put down the material questions he asks, and the material answers of the witness, until you have gone

through. Then put down the material questions asked by the other party, and the answers in like manner. Then read the whole over to the witness distinctly, and let him correct himself where you have mistaken his meaning; and after you have gone through all the corrections, then read it over to him again. Then say—

Sworn before us [or me] on the time and at the place above specified.

Then sign your name on the left hand side of the page, immediately after and under the last clause above mentioned. And let the witness sign his name also, on the right hand side of the page. If he cannot write, let him make his mark.

Then if the witness who gave the notice of taking the deposition be present, and that notice were in writing, copy the notice word for word immediately after the deposition, and swear the witness thereto thus:

A. B. maketh oath, that he did on the day of , in the year of our Lord , deliver to a true copy of the foregoing notice.
Sworn before me, the day of , in the year B. C.

Or, if there were no written, but only a verbal notice, then thus:

A. B. maketh oath, that he did, on the day of , in the year , give notice to , that the deposition of would be taken at the house of , in the county of , on the day of , between the hours of and , in behalf of , to be read in evidence in the suit depending in the court for the county of , wherein is plaintiff and defendant, pursuant to a commission for that purpose issued by the said court.
Sworn before me [or us] the day of , in the year B. C.

If, however, neither the notice nor witness who gave it is present, and the commission be satisfied, that that is the day and place appointed by the notice, or by consent of the parties, he ought to proceed and take the deposition.

When all is done, then seal up the deposition and other affidavits, with the commission thereto annexed, and direct the same to the court from whence the commission issued.

Regularly when thus sealed up, it should be delivered to the party for whom taken; but if there is any cause to suspect he will not deliver it into court, then a copy of the whole should be made, and be signed and attested as above directed in all particulars, and delivered to the other party

also. Or the commissioner may deliver it with his own hands into the court, and then no copy need be made out.

Form for taking Depositions, under the Act of Congress, to be read in the Federal Courts.

State of North-Carolina, Wake County.

The deposition of A. B. of lawful age, taken at the instance of the plaintiff, by me, C. D. one of the judges of the county court of pleas and quarter sessions for the county of Wake aforesaid, to be read in evidence on the trial of a suit or matter of controversy now depending and at issue in the circuit court of the United States for the third circuit, in the district of Pennsylvania, wherein John Doe is plaintiff and Richard Roe defendant. The said A. B. on this day of , in the year of our Lord , at the dwelling house [or tavern, &c.] of , in the county of Wake, and state of North-Carolina aforesaid, between the hours of in the morning and in the afternoon, being by me carefully examined and cautioned, and sworn to testify the whole truth in the controversy aforesaid, deposeth and saith—[Here insert what the deponent declares, and then conclude.] And further this deponent saith not.

A. B.

Taken as aforesaid, before me, and subscribed by the deponent, after it was reduced to writing, which was done by me [or by the said deponent in my presence, as the case may be] at the time and place first above said.

C. D.....(seal.)

One of the judges of the county court of pleas and quarter sessions for the county of Wake aforesaid.

The magistrate will then insert the following certificate:

This may certify that the foregoing deposition of A. B. was taken as aforesaid, before me, C. D. one of the judges of the county court of pleas and quarter sessions for the county of Wake aforesaid (not being of counsel or attorney to either of the said parties, or interested in the event of the said cause) at the time and place therein mentioned, and was subscribed by the said deponent A. B. after the same was reduced to writing, which was done by me [or by the said deponent in my presence, as the case may be.] That the said deposition was taken for the following reasons; to wit,—That the said deponent lives in the county of Wake, and state of North-Carolina aforesaid, at a greater distance from Philadelphia, the place of trial of the said suit, than one hundred miles; and that no notice was given to or served on the adverse party, Richard Roe, or his attorney, because neither of them was or is within one hundred miles of the place of caption aforesaid.

Given under my hand and seal, at—[name the same place where the deposition is taken] in the county of Wake, and state of North-Carolina aforesaid, the day of , in the year of our Lord

C. D.....(seal.

One of the judges of the county court of pleas and quarter sessions for Wake aforesaid.

DRUNKENNESS—See *Vice and Immorality.*

DUE-BILLS.

By act of 1809, c. 12, any person or persons, or body corporate, who shall, in future, make or issue any promissory notes, commonly called due-bills, for a less sum than ten shillings, intended to pass current as a representative of, or substitute for money, shall be liable to an action, in the name of the bearer, for recovery thereof, in any of the courts of this state, which courts shall have cognizance of the same, and who may render judgment against such person or corporation. To maintain which action, it shall not be necessary for the plaintiff to prove that such note or due-bill was ever presented, or payment demanded; any words in said note or due-bill to the contrary notwithstanding.

No person shall offer, in payment of any debt, or in exchange of any money or other thing, any such note or due-bill, which is already issued, or may hereafter issue, unless to the person or corporation having issued the same, under the penalty of five pounds for each offence, to be recovered before any justice of the peace, to the use of the person suing for the same. Provided that nothing in this act shall affect the bills or notes already issued for the benefit of any seminary of learning.

The statute of limitation shall not run, nor be pleaded in bar of the recovery of such note or due-bill already issued as aforesaid, or which may be issued.

But by act of 1814, c. 6, the treasurer of the state is authorised and directed to issue treasury notes to the amount of $ 82,000, of the following denominations, to wit, five cents, ten cents, twenty cents, twenty-five cents, thirty cents, forty cents, and fifty cents; which notes are made receivable for taxes and debts due to the state.

DUELLING.

No person sending, accepting, or being the bearer of a challenge for the purpose of fighting a duel, though no death ensues, shall ever after be eligible to any office of trust, honour, or profit in this state,—any pardon or reprieve notwithstanding; and shall further be liable to be indicted, and, on conviction before any of the courts in this state having cognizance, shall forfeit and pay a sum not exceeding 100*l.* to the use of the state.

If any person fights a duel in consequence of a challenge sent or received, and either of the parties should be killed; then the survivor, on conviction thereof, shall suffer death without benefit of clergy; and all their aiders or abettors shall be considered accessories before the fact, and likewise suffer death without benefit of clergy.—*Acts* 1802, c. 5.

ELECTIONS.

The county court, at the term next preceding the day of election for members of assembly, in every year, shall appoint two inspectors to superintend the election; or on failure to make such appointment, or in case any person appointed shall refuse to act, the sheriff with the advice of three justices, or three freeholders, where no justices are present, before the beginning of the election, shall appoint them.

Where there is no sheriff or coroner to take the poll at the annual or any other election, three justices of the peace may appoint some reputable freeholder to hold the election, with the same powers, directions, and restrictions as sheriffs are invested with and subject to. And the election so held, shall be as valid as if held by the sheriff or coroner.

All inspectors appointed to superintend any election of members of the general assembly shall, before they enter upon the duties of said appointment, take an oath or affirmation, to be administered by the sheriff, or in case of his absence, by some justice of the peace, to conduct the election which they are appointed to superintend, fairly and impartially, according to the constitution and laws of the state. And the deputy sheriffs holding such elections, shall take the said oaths or affirmations.

It shall not be lawful to call or direct any regimental, battalion, or company muster, or to assemble armed men on the day of any election, at any place appointed by law to hold elections for members of congress or members of the general assembly within this state, under the penalty of 500*l.*

Any member of assembly elected, who shall fail to attend at any session of the general assembly which he ought to attend, shall forfeit twenty-five pounds, to be recovered in the county court of the county for which he was elected, at the suit of the governor for the time being, on a certificate of such failure issued by the speaker of the house in which such delinquency happened, unless sufficient excuse be offered and proved on oath by such member at the next succeeding assembly.

Any person who shall by force and violence break up any election, by assaulting the officers thereof, or depriving them of the ballot boxes, shall be deemed guilty of a misdemeanor; and upon conviction, shall be imprisoned three months, and until he pay such fine as the court may assess, not exceeding fifty pounds, and all costs and charges.

Any person intending to dispute the election of another, shall give the member whose election he intends to dispute, thirty days' notice thereof previous to the meeting of the general assembly, with the ground on which the same will be disputed: and the same notice of time and place required in taking depositions at law shall be required and proven on such investigation.

Any person failing to attend and give testimony in such case, after being legally summoned by a lawful officer, under a subpœna issued by a justice of the peace or other person authorised to take depositions, shall forfeit and pay to the party grieved, the sum of twenty pounds. But such witness shall not be compelled to discover the person for whom he voted, or his own disqualifications as an elector. And he is entitled to receive from the person at whose instance he was summoned, the sum of six pence for every mile travelling to and from the place of caption, and his ferriages, to be recovered before a justice of the peace.

See *Arrest, Justices of the Peace.*

ENTRIES.

When the entry-taker shall certify to the county court a disputed claim, in manner as by this act directed, the said court shall order the sheriff to summon a jury of good and lawful men, unconnected by affinity or consanguinity with the contending parties, who shall be above all exceptions, and having given the parties ten days' previous notice, shall go with the said jury on the premises, and the jury being sworn to do equal right between the parties, to cause witnesses on both sides to be examined, and the allegations of the parties to be made before such jury, and to receive the verdict of the said jury, and return the same, together with the pannel, to the next county court. And at the said court if it shall appear that the jury have found generally for any of the parties, then the court shall order an authentic copy of the verdict to be delivered to the party for whom the same shall be found,

who, upon entering the same with the entry-taker, and performing the requisites by this act required, shall obtain a certificate and order of survey, in like manner as if he had made entry of a claim for the same premises; and the officer shall refund to the other party all the money which he has received from him, except the fees to himself for the services actually performed. And in all cases where the jury shall find a special verdict, the county court shall decide thereon according to the right of the case, and shall order such determination to be delivered to the party, who may thereupon proceed as in case of a general verdict. Provided that where it shall be made appear to the county court that the jury were partial or not all good and lawful men as required by the constitution, or have been influenced by any unfair practices of the party for whom they shall find, the said court shall order a new trial, and the proceeding shall be as before directed.

If any entry-taker shall be desirous to make any entry of lands in his own name, such entry shall be made in its proper place before a justice of the peace of the county not being a surveyor or assistant; which entry the justice shall return to the county court at their next sitting, and the county court shall insert such entry. And every entry made by or for such entry-taker in any other manner than is herein directed, shall be illegal and void, and any other person may enter, survey, and obtain a grant for the same land.

The several county courts within this state have full power and authority, in all cases now undetermined, where they shall judge a new trial necessary, to order the same either on the premises where the bounds of the land come in question, or before them; in which last case they shall direct a jury to be impanneled and sworn as in the trial of other causes, to try the disputed claim; and where the said jury shall find generally or specially, the same proceedings shall be had on their verdict as in cases of verdicts returned by the sheriff respecting vacant or unappropriated lands.

In many cases after entering a caveat the contending parties meet and agree; which agreement often cannot be ascertained,—and thereby justice is delayed, and the intention of the legislature in granting land defeated. For remedy whereof, on application to the county court where the land lies, both parties having such previous notice as the court shall judge sufficient, they shall ascertain the agreement, and give judgment in the same manner as on a verdict of a jury, and the like proceedings shall be had thereon. Provided nevertheless, that in case the agreement cannot be ascertained to the satis-

faction of the court, they shall order a trial as in other cases of caveats.

In case any person summoned as a juror to attend on the premises, who shall fail to appear and proceed on the trial, the sheriff shall return a list or lists of their names so failing, to the county court next succeeding, who shall order a notice to issue for him or them, to show cause at the next sessions, in justification of such failure; which if the court should think not sufficient, they shall fix a fine on the said delinquent, not exceeding fifty pounds, and be further liable to an action of the party grieved.

Where grants may be secretly obtained on entries heretofore made by artful and designing men, for land to which they have no just title, to the great injury of many of the inhabitants of this state; in such case, upon complaint being made on oath, and sufficient reason shown to the governor or commander in chief, he may suspend the execution of such grants, and direct the secretary to certify the same to the court of the county wherein the land may lie. And the court shall, upon receiving such certificate from the secretary, order a trial by jury, in the same manner as they might do if a caveat had been made in the office of the entry-taker, and the proceedings to be conducted in the same manner as is directed.

Where it shall appear by the entry-taker's books, that a warrant hath not issued by the entry-taker, the clerk by order of the court, seven acting justices being present, shall issue warrants inserting the date of the entry in the body of the warrant, to the person or persons who may apply for the same.

The enterer may make it appear by the oath of the surveyor, taken in open court, and certified by the clerk upon the warrant, or before any two justices out of court, and certified under their hands and seals, that no vacant land could be found, or only part of the quantity called for by said warrant, and the entry-taker shall have credit to the amount thereof.

Where a person shall enter any vacant land, and shall make use of any of the timber or growth thereon, before he pays the purchase money into the treasury; or where he shall make use of the state's land, by making therefrom or thereon tar, turpentine, shingles, staves, or cutting the timber off the same, before he shall have entered and paid for the same, he shall forfeit and pay the sum of twenty pounds for each hundred acres so by him entered; and shall also forfeit his right of entry. Provided, nothing herein shall affect any en-

try of land made and settled on for the purpose of improvement by agriculture.

In all cases of suspension of grants by the governor, the person at whose instance such suspension may be granted, shall cause the same to be docketed in the court of the county where the land so suspended, lies, within six months after the granting of the suspension; otherwise the said suspension is void.

Whenever an enterer of land shall fail to pay the purchase money within the time limited by law, any person who shall have made a subsequent entry for said land, may pay the purchase money into the treasury and obtain a grant for the same.

In the trial of caveats of land, and suspension of grants, where either party is dissatisfied with the verdict of the jury, he may appeal to the superior court, under the same rules, regulations, and restrictions as are by law established for prosecuting appeals to the superior courts.

By act of 1815, all entries of land regularly made in the books of any entry-taker within this state, who has not renewed his bond agreeably to law, shall be as good and available in law and equity as if the entry-taker with whom the said entries were made had renewed his bond, until a successor shall be appointed.

ENTRY-TAKER.

At the court which shall be held after each respective vacancy, a majority of the justices present shall elect an entry-taker, who shall hold his office during good behaviour.

He shall in open court take and subscribe the oath prescribed for the qualification of officers, and also an oath well and impartially to discharge the several duties of his office; and he shall give bond with sufficient security, payable to the governor for the time being, in the sum of 2,000*l.* for the faithful discharge of his duty, and he shall renew the same at the expiration of every two years thereafter; otherwise his office shall be *ipso facto* vacated, and he shall be ineligible to a second appointment, and the court shall immediately appoint another. No public debtor is eligible to that office. He is removable from office also for neglecting or refusing to perform the duties by law required of him, or for knowingly suffering the provisions and restrictions of the law to be eluded or evaded, or for asking, demanding, or receiving, directly

or indirectly, any greater fees than are by law allowed: and for so doing or omitting, he forfeits 500*l.* and is rendered incapable to hold any other office for ever.

Each entry-taker shall deliver up his books to the clerk in open court, at the time of his resignation, or dismission, or at the first court which shall happen thereafter, first particularly noting in the margin opposite each entry, all such entries on which warrants have not been issued, to the end his successors may by written and particular order of the court issue the same.

If any person not being an entry taker, shall presume to possess himself of the entry-taker's books for any county in this state, and shall make any official use of the same, or write therein, or intermeddle therewith in any manner whatsoever, he shall on conviction thereof in any court of record, be liable to imprisonment, not exceeding six months for each and every offence.

See *Arrest*.

ESCAPE.

Escape is where one who is arrested gains his liberty before he is delivered by due course of law.

There are escapes in civil cases, and escapes in criminal ones.

With respect to escapes in civil cases, if any person committed, rendered, or charged in execution, or upon mesne process, to any prison, shall thence escape, it shall and may be lawful to and for any justice of the peace of the county where such prisoner was in custody, upon oath of such escape made before him by the sheriff, under sheriff, jailor, or other credible person, to grant to any person demanding the same, one or more warrant or warrants, under his hand and seal, directed to all sheriffs, bailiffs, and constables within this state, reciting the cause of such person's commitment, and the time of his or their escape, and commanding them and every of them in their respective counties and precincts, to seize and re-take such prisoner so escaped or going at large, and being so taken, forthwith to convey to the prison where debtors are usually kept in the county where such retaking shall be, there to be kept in safe custody until he or she be thence discharged by due course of law; which warrant the sheriff is required to obey and receive the prisoner into his safe custody, and to give

a note to the person delivering him, her, or them, certifying his receipt of such prisoner, and shall also make return of the execution of such warrant to the county where such prisoner escaped; and if he or she was there in custody charged in execution, then the said sheriff shall safely keep him or her without bail or mainprise, until he or she shall have made full payment and satisfaction to the plaintiff or plaintiffs, creditor or creditors, in whose name such execution was issued out, or until the judgment or judgments obtained against him or her shall be reversed or discharged by due course of law: and if any such prisoner shall have been in custody upon mesne process in any action of debt, or upon the case, the sheriff to whom he or she shall be committed, shall in like manner keep such prisoner in his safe custody, and make return of the execution of the warrant by which he or she was re-taken, to the court of the county wherein he or she was first arrested; and thereupon it shall be lawful for the said court, upon the plaintiff's filing his declaration and entering the defendant's appearance, to proceed to give judgment thereon, in the same manner as if the defendant had appeared in court and refused to plead, unless such defendant shall cause special bail to be entered in said court, and shall immediately plead to issue; and thereupon a certificate under the hand of the clerk of the said court, that such bail is given and delivered to the sheriff in whose custody such defendant shall then be, it shall be lawful for him to set at large such prisoner, and not otherwise. But where any prisoner escaped, and re-taken upon such warrant as aforesaid, shall thereafter be charged with treason, felony, or other capital crime, in behalf of this state, for which he or she ought to be tried in one of the superior courts, and shall be for such cause removed to any jail of such court, every such prisoner shall be charged in such jail with all the causes wherewith he or she stood charged in the jail from whence he or she escaped, or was removed, until he or she be thence delivered by due course of law; any law, usage, or custom to the contrary notwithstanding.

In regard to escapes in criminal cases, the escape of a person arrested upon criminal process by eluding the vigilance of his keepers before he is put in hold, is an offence against public justice; and the party himself is punishable by fine and imprisonment. But the officer permitting such escape, either by negligence or connivance, is much more culpable than the prisoner. Officers therefore, who after arrest negligently permit a felon to escape, are punishable by fine. But voluntary escapes by consent and connivance of the officer, are a

much more serious offence: for it is generally agreed that such escapes amount to the same kinds of offence, and are punishable in the same degree, as the offence of which the prisoner is guilty, and for which he is in custody, whether treason, felony, or trespass; and this, whether he were actually committed to goal, or only under a bare arrest. But the officer cannot be thus punished till the original delinquent is actually found guilty, or convicted by verdict, or confession of the crime for which he was so arrested or committed; otherwise it might happen that the officer might be punished for treason or felony, and the person arrested and escaping might turn out to be an innocent man. But before the conviction of the principal party, the officer thus neglecting his duty, may be fined and imprisoned for a misdemeanor.

Or he may be proceeded against under the act of assembly, which is thus:

When any person charged with any crime or misdemeanor whatsoever, shall be legally committed to any sheriff, deputy sheriff, constable, or jailor within this state, and such sheriff, deputy sheriff, constable, or jailor, wilfully or negligently shall suffer such person so charged and committed, to escape out of his or their custody, the sheriff, deputy sheriff, constable, or jailor so offending, being thereof lawfully convicted, shall be removed from office and fined at the discretion of the court before whom the trial may be had; and in all such cases it shall be sufficient in support of the indictment against such sheriff, deputy sheriff, constable, or jailor, to prove that such person so charged was committed to his or their custody, and it shall lie upon the defendant to show that such escape was not by his consent or negligence, but that he had used all legal means to prevent the same, and acted with proper care and diligence. And when a sheriff shall in consequence of a conviction under this act, be removed from office, the justices of the court of pleas and quarter sessions of the county for which such sheriff had been appointed, are hereby authorised upon such conviction and removal, to elect and nominate a freeholder as required by law, to execute the office of sheriff until the next annual election, who shall thereupon be commissioned by the governor or commander in chief as in other cases. Provided, that such removal of a sheriff shall not affect his power or duty as a county treasurer of the public revenue, but he shall proceed on such duty, and be accountable as if such conviction and removal had not been had.

It shall and is hereby declared to be a part of the duty of the attorney or solicitor general, as the case may be, that

when they shall be informed or have knowledge of any felon, or person otherwise charged with any crime or offence against the state, having escaped out of the custody of any sheriff, deputy sheriff, constable, or jailor, to take the necessary measures to prosecute such sheriff, deputy sheriff, constable, or jailor so offending; and for every such offence, and on all indictments in such cases, he may endorse the governor for the time being as prosecutor.

Wherever a person is lawfully arrested, and afterwards escapes, the doors of a house may be broken open to take him, on refusal of admittance—2 *Haw.* 87.

No person should suffer capitally for the crime of another; therefore the principal jailor is punishable by fine only, for the voluntary escape suffered by his deputy.—2 *Haw.* 135.

ESTRAYS—See *Strays.*

EVIDENCE,

IN GENERAL.

1st. The party who makes an *affirmative* allegation which is denied by his adversary, is in general required to prove it. For the *negative* not admitting in its nature of direct proof, the party who denies a fact, is not called upon to give that evidence which can only be circumstantial, till some evidence has been given to prove the fact alleged. But in cases where a man is charged with not doing an act, which by law he is liable to do, a different rule prevails; for the law presumes that every man does his duty to society, until the contrary is proved.—*Bull. N. P.* 298.

2d. The evidence must be applied to the particular fact in dispute.

3d. The best evidence which the nature of the case will admit of, must be produced. Thus no parol testimony can be received of the contents of a contract in writing, which is in existence and in the custody of the party. The subscribing witness to a deed, if he be living in the state, is alone competent to prove its execution; but if he be dead, or out of the state, or not to be found, (and therefore presumed to be dead or out of the state) or become executor, administrator, heir, or legatee (but not if become assignee), or become blind or mad, then *his* handwriting may be proved, as being the next best evidence. And if the handwriting of such subscribing

witness cannot be proved, then proof of the handwriting of the obligor may be admitted.

4th. The law never gives credit to the bare assertion of any one, however high his rank or pure his morals; but always requires the sanction of an oath. The few instances in which *hearsay* evidence can be admitted, are such as are in their very nature incapable of positive and direct proof. Of this kind are all those which can only depend on *reputation*. The excluding of hearsay evidence in questions of *pedigree* would generally prevent all testimony whatsoever.

There is no other way of knowing the evidence of deceased persons, but by the relation of others, of what they have been heard to say.—3 *T. R.* 707. *Peake's L. E.* 172.

5th. What a party admits, or which another asserts in his presence and he does not contradict, is received as evidence against him; but not what is said by his wife, or any other member of his family in his absence.—*Peake's Ev.* 11.

But a distinction must be made between an admission and an offer of compromise, after a dispute has arisen. An offer to pay a sum of money in order to get rid of an action is not received as evidence of a debt; but admissions of *particular articles* of an account are good evidence.—*Bul. N. P.* 236.

6th. The confession of a felon, voluntarily made, is evidence against him on his trial. Not so if threats or promises have been made to induce him to confess. Yet, if in consequence of the confession so obtained, stolen property is found, evidence of that fact may be admitted.—*Leach. Cro. L.* 299.

7th. Where positive and direct evidence is not to be looked for, the proof of circumstances and facts consistent with the claim of one party, and inconsistent with that of the other, is deemed sufficient to *presume* the particular fact which is the subject of controversy. Long and indisputed possession of any right or property, affords a presumption that it had a legal foundation; and rather than disturb mens' possessions, even records have been presumed. But all such cases as rest on presumption, and not on positive proof, very slight evidence is sufficient to rebut and overturn, and to call on the different parties to establish their respective rights by the ordinary rules of evidence.—*Peake's Ev.* 13.

8th. Presumptions are of three sorts; violent, probable, and light or timerary. Violent presumption often amounts to full proof: as if one be run through the body with a sword in a house, whereof he instantly dieth, and a man is seen to come out of that house, with a bloody sword, and no other man was

at that time in the house. Probable presumption moveth little; but light or timerary, moveth not at all.

WRITTEN EVIDENCE.

This class of evidence, where the subject is treated of at large and embodied into a *system*, is usually divided and subdivided into appropriate and technical parts for the sake of order and perspicuity. But to follow that course on this occasion, would lead me far beyond the necessary limits of the present work. Therefore, nothing more will be here attempted than a general outline and a few familiar rules.

Acts of the assembly and judgments of our courts are denominated *Records*, and are so respected by the law, that no evidence whatever can be received in contradiction of them; but being the precedents of the law to which every man has a right to have recourse, they are not permitted to be removed from place to place to serve a private purpose, and are therefore proved by copies of them, which, in the absence of the original, is the next best evidence. But a copy of a copy will not do.

Courts are bound to take notice of *general* acts of assembly, (such as relate to the public in general) without being pointed out;—not so *private* acts which only concern private persons.

A verdict of a jury in a civil cause is no evidence whatever as against third persons, except where a man merely uses the name of another for his own benefit. And verdicts are no evidence until final judgment is entered upon them.

But the representative of a party, such as his executor, administrator, heir, or assigns, is not considered as a third person within this rule; for such a representative is permitted to give the verdict in evidence.

All exemplifications of record from the courts of this state must be regularly certified by the respective clerks before they can be received as evidence; and if they come from another state, the act of congress on this subject provides, that if they be attested by the clerk, and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate, as the case may be, that the said attestation is in due form, they shall be received as evidence. Or they may still be proved by the testimonial of the governor and the great seal of the state from whence they are brought.

A justice of the peace may take for evidence, depositions taken to be used in any cause in court between the same par-

ties, if due notice were given to the adverse party of the time and place of taking; and if the order for taking the same were made by the court or some judge or justice thereof, to take the deposition to be read absolutely; or if *de bene esse* or conditionally, and the above requisites appear, and also that the witness is since dead, or sick and unable to attend, or has been sought and cannot be found.—See *Depositions ante.*

But a deposition cannot be given in evidence against any person who was not party to the suit; because he had not liberty to cross-examine the witness. Yet this rule admits of some exceptions; as particularly, in all cases where hearsay and reputation are evidence. So a deposition taken in a cause between other parties, will be admitted to be read, to contradict what the same witness swears at a trial.

In the case of private deeds, or other instruments, the production of the original if in existence, and in the power of the party using it, is always required; till which done, no evidence whatever of the contents can be received; but where the original has been destroyed, or lost by accident; or, being in the hands of the adverse party, notice has been given him to produce it, then an examined copy, or even parole evidence of the contents, being the best evidence in the power of the party, is received; it being first proved, in case a copy is offered, that the original of which it purports to be a copy, was a genuine instrument.—10 *Co.* 92. 37 *R.* 151. 1 *Str.* 526, 70. 1 *Atk.* 446.

A note of hand not under seal, may be proved by proving the handwriting of the maker; but if the subscribing witness is to be had, he ought to be produced. Indorsements ought to be proved though the indorser acknowledged the endorsement, if the suit be against the maker of the note or bond.

The book of a merchant or trader is no good evidence of itself for him; but is good evidence to prove a debt against him.

The merchant or trader, in order to make his book evidence for him, must prove the actual delivery of the goods in the account; or he must prove that such a one was his clerk, and that he is now dead, and that the entries are in his handwriting. It will not be sufficient to prove that the clerk has gone to another state or country.

Where there is a book account for goods sold, or work and labour done, and the creditor will swear that it is a book account, and that he has no way to prove it but by his own oath; and also that the book contains a true account of all the dealings, or the last settlement of accounts between them, and that

all the articles therein contained and by him proved were fairly and justly delivered, and that he hath given all just credits, it shall be good evidence as far as thirty pounds, for all articles delivered within two years before the suit brought; or if it be by or against executors or administrators, for all articles on which two years had not elapsed before the death of the deceased, if suit be brought, or set off pleaded within one year after his death, or administration granted.

Executors or administrators when they give in evidence the book of the deceased, must swear or affirm that they verily believe the account as there charged, is just, and that there are no witnesses to their knowledge who can prove the delivery of the articles they propose to prove by the book; that they found the book so stated, and do not know of any other or further credit to be given than what is there mentioned.

A copy of the account, proved in the same manner, is good evidence, unless the defendant has given notice that he will require the book on the trial.

The defendant may contest the plaintiff's evidence, and oppose the same by other legal evidence; and where the defendant shall be an executor or administrator, his testator's or intestate's book may be given in evidence against the plaintiff's book, where the plaintiff is an executor or administrator, for such articles as shall be proved in manner aforesaid.—See *Book-Debts.*

An account of an executor or administrator exhibited to, and filed in the county court, is no evidence in support of the plea of 'fully administered,' pleaded by him or his representative.

Handwriting cannot be proved by comparison of hands.—*Peake's L. E.* 69.

PAROL EVIDENCE.

All persons who are examined as witnesses, must be fully possessed of their understanding, that is, such an understanding as enables them to retain in memory, the events of which they have been witnesses, and gives them a knowledge of right and wrong. As a general rule, fourteen is said to be the age at which a child may be a witness, for then all are supposed to have attained a competent knowledge of right and wrong: but short of that age, the receipt or rejection of his testimony must in every case depend upon the sence of religion and apparent understanding of the child, when examined, previously to the oath being administered to him.

A person deaf and dumb, if of sense to have intelligence conveyed to him may be a witness, and give his evidence by signs, through the medium of an interpreter.

The oath to be administered to a witness is general, to speak the whole truth and nothing but the truth. One witness is generally sufficient; but two are necessary against a person accused of treason, misprision of treason, or perjury.

If a witness is convicted of perjury, or of forgery, or felony, and not pardoned, nor burnt in the hand; or if he hath by judgment lost his ears, or stood in the pillory, or hath been stigmatized, or branded, or whipped for any infamous crime, he ought not to be received as a witness. To found this objection to the testimony of a witness, the party who intends to make it should be prepared with a copy of the judgment regularly entered upon the verdict or confession; for until such judgment is entered, the witness is not deprived of his legal privileges. But by the modern decisions on this subject, though a man cannot be asked any question tending to convict him of a crime, and therefore be put in danger from his own examination, yet he may be asked whether he is already convicted, and has suffered the judgment of the law. The credit of a witness may be impeached by other witnesses, as to his general character, but not as to any particular crime whereof he was never convicted.

The *competency* of a witness is a question of law, to be decided by the court or justice whether the evidence shall be received; the *credibility* of a witness is a question of fact, which should always be considered in weighing testimony.

Negroes, Indians, mulattoes, and persons of mixed blood, descended from negro and Indian ancestors to the fourth generation inclusive, though one ancestor of each generation may have been a white person, are witnesses only against each other.

A person interested in the event of the cause, or a wife or husband of the party, or one who is to receive part of the penalty or forfeiture, is not a good witness. Yet, in some criminal cases, from the necessity of the thing, interested persons are allowed as witnesses; as where the owner prosecutes an indictment for stolen goods, he is concerned in interest, for he will be entitled to restitution; yet he is a good witness. So where the assembly offer a reward upon the apprehension and conviction of an offender, to the taker, he may be allowed as a witness. So too, if by act of assembly the apprehender be entitled to a reward upon conviction—*Trials of the Rioters in* 1780. *Peake's L. E.* 101, note.

A person convicted of felony, who has his clergy, and is burnt in the hand, is a competent witness. So too is one who has been pardoned by the governor, of felony, or treason against this state after conviction or judgment.

A wife may be a witness against the husband for actual violences committed upon her own person; as if a man hold his wife till another ravish her; or where a man is indicted for a forcible marriage, or for bigamy, the second wife may give evidence against him, or he against her; or where the husband or wife demands sureties of the peace against each other.

One guilty of the same crime is a competent witness for or against the accused, at any time previously to the conviction of the witness.

One fire-hunter may give evidence against another, and, after conviction of one or more of such offenders, shall be acquitted and discharged of all penalties for the same offence.

In the case of murder, what the deceased declared after the wound given, is good evidence, if such declaration were made after all expectation of recovery were past, and when he was at the point of death. But if reduced to writing, that must be produced.

A justice has not a legal right to admit an accomplice to become a state's witness upon a promise of pardon or of not being prosecuted; yet if in a case of necessity he do make such a promise, and afterwards the accomplice make a full and fair confession of the whole truth, and gives evidence for the state, and that is made use of to convict the other offenders, and discloses all treasons and felonies which he knows of, the court will in such cases stop the prosecution against him; but if he conceals or misrepresents any thing, the court will not stop the prosecution.

Our bill of rights declares that no man shall be compelled to give evidence against himself. Hence it is held that if a criminal be sworn to his examination taken before a justice, it shall not be read against him.

Any one who is a bare trustee, and no way concerned in interest, is a good witness, and may prove the execution of a deed to himself.

A witness laying a wager that the party for whom he is to be a witness will carry the cause, is a good witness notwithstanding, for otherwise no unwilling witness could be made use of.

An attorney ought not to be admitted against his client, as to the knowlege of any fact acquired after that connexion.

If a witness entitled to some interest or share in the suit, will release or tender a release of his interest; or if the party having a demand, or cause of action against the witness, will release him, or tender a release, he thereby becomes a good witness.

The whole of a confession must be taken together. As if the defendant said he owed the debt, but had paid it; the whole meaning must be taken together.

Either the old or New Testament our laws require an oath to be administered on; unless a witness be an infidel; then according to the ceremonies of his religion.—2 *Bac. Ab.* 577, note.

EXAMINATION—See *Criminals*.

EXECUTION.

An execution may issue from any court in this state, to any county of the state where the defendant or his goods may be found, and shall be executed by the sheriff or other officer to whom the same may be directed. In cases of *fieri facias*, it is the duty of the sheriff to make the money out of the goods and chattels of the defendant, if sufficient can be found; if not, then of his lands and tenements for the residue.

No sale of property under an execution shall commence before eleven o'clock in the morning, or after four o'clock in the afternoon of the day on which such sale is to be made, under the penalty of 100*l.* to be paid by the officer making the sale.

Where any property, real or personal, shall be sold on any execution of *fieri facias*, *venditioni exponas*, or order of sale, issued from any court of law or equity in this state, or from any justice of the peace, such justice having authority to issue the same, by any officer lawfully authorised to make such sale, and the sale be legally and bona fide made, and such property so sold be not the proper goods and chattels, lands and tenements (as the case may be) of the person against whose estate the said process or order issued, by reason of which the purchaser may have been deprived of the property, or may have been compelled to pay damages in lieu thereof to the real owner, then, and in every such case, the purchaser or his executors or administrators may sue the person against whom the said process or order issued, or his legal representatives, in an action on the case, in any court of law in this state, and recover such sum as he may have paid for such property, with

interest thereon from the time of payment. Provided always, that such property, if the same be personal property, be present at such sale, and actually delivered to such purchaser.

It is the duty of the several courts of pleas and quarter sessions, at the first term which shall be holden in their respective counties after the first day of January in each and every year, to settle the charges of the sheriffs, coroners, constables, and other officers, for keeping, watering, and feeding any horse, cattle, hogs, or sheep, taken into their custody under legal process. And the said officers may maintain their actions respectively against the debtors whose property has been so holden in custody, for the amount of the charges thereby incurred, before any court or justice of the peace having jurisdiction of the sum due therefor.

But every officer claiming under this act, shall make out his account, and, if required, give the debtor, his agent, or factor a true copy thereof, signed with his own hand, and shall return the said amount, with the execution or other process under which the property has been seized, to the justice or court to whom the said execution or process is returnable; and shall then and there also swear to the correctness of the several items therein set forth, otherwise he shall not be permitted to recover.

If either of the said officers who has levied an execution or other process on property, shall permit the same to remain with the possessor thereof, it may be lawful for such officer to take a bond for the forthcoming thereof to answer the said execution or process: but the said officer shall nevertheless remain liable as heretofore, in all respects, to the claims of the plaintiff.

No sheriff, constable, or other officer shall sell any goods or chattels, by virtue of an execution, until he shall have advertised the same for sale ten days at least, in three public places in his county. One of which places, if the defendant resides within the same county, shall be within the captain's district in which said defendant resides. And every sheriff having an execution from any court of record, shall, in addition to the above places, advertise the day of sale at the courthouse of his county.

The sale of lands under an execution or other process or order, must be advertised forty days.

Whenever any sheriff, constable, or other officer within this state, shall return upon any writ of *fieri facias* or *venditioni exponas* to him directed, that he has made no sale for want of bidders, he shall state in his return the several places at which

he hath advertised the sale, and the places at which he hath offered the property for sale. And every sheriff or coroner failing to make such specification shall for every omission be subject to a fine of twenty pounds, and every constable for a like omission, five pounds, and shall be liable to an indictment for a misdemeanor in office, and also liable as heretofore to an action for a false return.

See *Debt and Debtor*.

EXECUTORS AND ADMINISTRATORS.

An executor is he to whom another man commits by will the execution of his last will and testament.

If an executor reside out of the state, he is required to give bond with sufficient security to the chairman of the court where the will shall be proved, and his successors, in double the supposed amount of the personal property of the testator, for the faithful performance of his duties. And until he shall give such bond, (which can be done only within the space of one year after the death of the testator) the court of the county in which the testator had his last usual place of residence shall grant letters of administration with the will annexed.

Administrators have their origin in the statute of 31 Edw. III. c. 11. In England they are appointed by the ordinary; in this state, by the court of pleas and quarter sessions.

An administrator is he to whom letters of administration have been granted by the proper authority. And his power may be either general, of all the personal property, rights, and credits of the intestate; or he may be an administrator with the will annexed; as where there is no executor named in the will, or where the executor refuses to qualify; in which case his powers are limited by the will.

Or he may be administrator of the goods not administered; as where the executor or first administrator die, and the residue of the goods are committed to his care.

Or he may be an administrator during the nonage of an infant executor, and the like.

An infant may be appointed executor, even before he is born, but cannot act as such till the age of seventeen years.

An executor may do many acts before he proves the will; such as taking possession of testator's goods, paying debts and legacies, receiving debts, commencing suits (but not declaring);

Administration must be granted,—

1st, To the husband or wife: or,
2d, To the children, sons, or daughters: or,
3d, To the father or mother: or,
4th, To a brother or sister: or,
5th, To the next of kin, as an uncle, aunt, or cousin: or,
6th, To the greatest creditor residing in the state: or,
7th, To any person, at the discretion of the court.

A residuary legatee is to have the administration of an estate, when the executor dies intestate; the residue of the estate being devised to such legatee.—1 *Vent.* 217.

If administration is granted, and afterwards a will is produced and proved, the administration shall be revoked, and all acts done by the administrator are void.—*Roll.* 2. *Abr.* 907.

Inventories are to be returned on oath within ninety days from the qualification of an executor or administrator, that is, at the term of qualification or the succeeding term. And accounts of sales are also to be returned on oath.

When the estate of any deceased person shall be so far indebted as that the debts cannot be discharged by the monies on hand at the death of the deceased, or where a sale shall be deemed necessary, for a just and proper distribution and division of the personal estate, then the executor or administrator shall sell the goods and chattels; not only the perishable, but the imperishable, if need be, such as negroes, of the deceased; first obtaining an order of the county court for that purpose, for the most that can be gotten for the same by public sale, having first advertised at the courthouse and four other public places within the county, at least twenty days before the sale; and shall give not less than six months credit, upon bond and security given. This provision however is not to affect any powers which may be given an executor by the will of his testator.

Executors and administrators are authorised to execute deeds of conveyance for land bona fide sold by the deceased, and for which he has given bond to convey the same. Provided such bond be first proved in the court of the county where the land lies, if in this state, if not, in the county where the obligee lives or obligor died; which bond so proven shall be recorded and registered in the register's books of the said county.

The court shall, in making allowances of commissions to executors, administrators, or guardians, take into consideration the trouble and time expended in the management of the

deceased person's estate, and shall allow commissions not exceeding five per cent, for the amount of the receipts and expenditures which shall appear to be fairly made.

It is the duty of the sheriff to sell deceased person's estates, only where administration is granted to a creditor; in which case the sheriff shall be allowed by the court, so as not to exceed two and a half per cent.

See *Limitation*.

EXTORTION.

Extortion is an abuse of public justice, which consists in any officer's unlawfully taking, by colour of his office, from any man, any money or thing of value, that is not due to him, or more than is due, or before it is due. The punishment is fine and imprisonment, and sometimes a forfeiture of the office.—4 *Blac. Com.* 141.

FAIRS.

The several county courts in this state may appoint a fair or fairs in their respective counties, at such place or places as they may judge most proper for the convenience of the inhabitants, so as to afford an opportunity and give encouragement to industry, by collecting the inhabitants for the purpose of exchanging, bartering, and selling of all such articles as they may wish or be necessitated to dispose of.

When any of the said courts may think proper to establish a fair, they shall nominate and appoint commissioners to regulate and conduct the same, by drawing up and forming a system of bye-laws for the government thereof, to be approved of by said court and entered of record; which rules so formed as aforesaid, shall be considered as valid and as effectual as if they had been expressed by an act of assembly for that special purpose. But said rules shall not be contrary to or inconsistent with the law of the land.

The inhabitants of every county wherein any fairs shall be so established, shall have free liberty and power to attend the same, dispose of, exchange, or barter any article or articles whatsoever therein, without any restraint or distinction whatever, subject nevertheless to such rules as the commissioners aforesaid or a majority of them, shall or may form for the regulation thereof.

A majority of the acting justices shall in all cases be present when any order or decree of the court is passed for establishing such fair or fairs; and that no less number than a majority shall have such power and authority as aforesaid; and a majority of the commissioners who may be appointed to regulate the same, shall in all cases be a quorum sufficient to transact any business relative thereto.

FEES.

TO THE SECRETARY OF STATE.

	L.	s.	d.
For making out and recording each Grant,		5	0
Certifying the Suspension of a Grant,		5	0
Copying and certifying a Will,		4	0
Copying or certifying the Record of a Grant or Probate,		4	0
Every Commission for a place of profit,		8	0
Every Search,		1	0
Every Certificate,		1	0

PRIVATE SECRETARY.

For a Judge's Commission,	2	0	0
A Commission to Attorney-General, Solicitor-General, Senator to Congress, Representative to Congress, Notary Public, or any other place of profit, each,	1	0	0
A Testimonial,		10	0
Suspension of a Grant,		7	6
Affixing the Seal to a Grant,		2	6

SURVEYOR.

For every Survey containing 300 acres or under,		16	0
For every hundred acres more,		4	
For every day's travelling to and from attending a survey of disputed lands, and performing the duties incident thereto,	1	0	0

ENTRY-TAKER.

For ever Entry, including all services,		4	0

THE RANGER.

For every Search,		1	0
For each and every Horse, Mare, or Gelding, and granting Certificate,		5	0
For each head of Neat Cattle,		2	6
For each head of Hogs and Sheep,		1	0
For every Bond,		2	0
For advertising Strays,		10	0

CORONER.

For attending on every Inquest,	1	4	0
All other Services, the same Fees as the Sheriff would be entitled to for performing them.			

CLERK AND MASTER IN EQUITY.

	L.	s.	d.
For a Report on an Answer,		3	0
On a Plea and Answer,		4	0
On a Demurrer and Answer,		4	0
An Affidavit to an Answer,		1	6
An Affidavit to a Bill,		1	6
A separate Affidavit,		2	0
For copying a Report, by the office copy sheet,		2	0
A Report stating an account made for 500*l.* or more, such sum as the Court may allow, not exceeding the sum of	25	0	0
Copies of Proceedings and Exemplification, copy sheet,		2	0
Taking a Bond,		1	6
Every Rule given for Service,		2	6
Every Rule not for Service,		1	3
Every Subpœna, Writ, or other Process,		10	0
Every Dedimus or Commission,		5	4
Every Injunction,		10	0
Drawing a Decree, by the copy sheet,		4	0
Enroling a Bill or Answer, by the copy sheet		2	0
Entering a Plea or Demurrer,		2	0
Recording Depositions to perpetuate Testimony, copy sheet,		2	0
Every Dismission,		2	0
Every Search,		1	0
Taking Security on a Leading Process,		2	0
Recording such Bond,		2	0
For affixing the Seal to any Writing requiring the same,		3	6

STANDARD KEEPER.

For every pair of Steelyards, Weights, and Measures, stamped and sealed,		1	6

COMMISSIONERS OF AFFIDAVITS.

For every Affidavit taken and certified,		4	0

ATTORNEY-GENERAL, SOLICITOR-GENERAL, AND COUNTY-SOLICITOR.

For every Bill found,	1	6	8
For every Bill returned 'Ignoramus,'		13	4

ATTORNIES.

Any Suit in Equity,	10	0	0
Any Suit in the Superior or County Courts, where the Title of Land comes in question,	5	0	0
All other Suits in the Superior Courts, on the law side, and all other Suits originally commenced in the County Courts,	2	0	0
All Appeals from Judgments of a Justice to the County Court,	1	0	0

PROCESSIONERS.

Processioners have half the Fees directed by law for surveying lands.

INSPECTORS.

	L.	s.	d.
For every barrel of Beef or Pork,		1	0
For every barrel of Flour,			6
For every barrel of Rice or Butter,			8
For every barrel of Fish,			4
For every barrel of Tar,			2
For every barrel of Pitch or Turpentine,			3
Each 100 Staves or Headings,			3
Each 1000 Shingles,			3
Each 1000 feet of Boards, Plank, or Scantling,		1	0

INSPECTORS AND TURNERS UP OF TOBACCO.

For inspecting, turning up, coopering, and issuing Note for every waggoned hogshead of Tobacco,		7	0
every rolled hogshead,		8	0
For inspecting Transfer Tobacco, at the rate, per 100 lbs. of			6

PICKERS OF TOBACCO.

For every 100 lbs. picked and prized, one-fifteenth part.

CONSTABLES.

For every day attending on Court when summoned by the Sheriff,		8	0
For whipping a Negro by order of Court or by a Justice of the Peace,		2	8
For serving every Warrant, for each person named therein,		4	0
For summoning every Witness,		2	0
For every Execution,		4	0
For every Attachment levied,		5	0
For every Bail Bond,		1	0
For serving Notice on one who fails to give in his Taxables,		2	0
For serving Notice on Bail,		4	0

JAILOR.

For each Prisoner, per day, for finding 1 lb. of wholesome Bread, 1 lb. of good roasted or boiled Flesh, Water, and every necessary attendance, and keeping the Prisoner clean, and finding him Fuel,		3	0

SHERIFF.

For every Arrest,		7	6
For every Bail Bond,		2	6
For serving a Copy of a Declaration,		1	0
For serving a Subpœna for each one named in the same,		3	0
For pillorying a Person,		5	0
For an Attachment levied,		7	6
For taking a Replevy Bond on such Attachment,		2	6
For executing a Warrant of Distress, or an Execution against the Body or Goods, two and a half per cent.			
For summoning, impanneling, and attending on every Jury, on every Cause in Court,		1	0

	L.	s.	d.
When a special Venire shall issue by Order of Court, for summoning each juror and attending the same,		2	0
For putting a Person in the Stocks and releasing him,		6	0
For every Commitment,		8	0
For every Releasement,		3	0
For serving and attending on any Person on a Habeas Corpus, per day.		15	0
For calling every Action in Court,			6
For imprisonment of Debtors or any other person, for each Prisoner per day for finding 1 lb. of wholesome Bread, 1 lb. of good roasted or boiled Flesh, and a sufficient quantity of fresh Water, and every other necessary Attendance, and keeping the Prisoner clean, and finding him Fuel,		3	0
For apprehending any Criminal,		10	0
For conveying any Person in his Custody for a criminal Offence, to the Jail where such person ought to be conveyed, at the rate, per mile, of			6
And for each day such Sheriff shall maintain said Prisoner,		4	0
For carrying any Sentence or Decree of the Court into execution where the convict is to be corporally punished, except that of death,		10	0
For every Notice of taking Depositions, same as Subpœnas.			
For the Execution and decent Burial of any Felon,	5	0	0
For selling an Intestate's Estate, to be allowed by the Court, not exceeding two and one-half per cent.			
For every Writ of Possession,		10	0

REGISTER.

For every Search,		1	0
For registering a Grant or Deed, if it contain but one Tract,		4	0
If it contain more Tracts, then for each additional Tract		1	0
For registering Divisions of Land, for each lot,		1	0
For registering every other Instrument of Writing,		4	0
For Copies, the same Fees as for Registration.			

COUNTY COURT CLERKS.

For every Leading Process returned to the first Court, including all Services, together with Dismission or final Judgment, where either happens,		10	0
For every Presentment or Indictment,		6	0
For entering and filing every Recognizance,		2	0
For every Continuance or Reference of any Cause after the second Court, including all Fees for every Service necessary thereon,		3	0
For the Court at which the Cause is determined, including all Services,		7	6
For every Subpœna, provided the party insert no more than four Witnesses in the same,		1	6
For every Execution or Order of Sale, where necessarily issued, including all Services thereon, with taxing Costs and Copy, and entering Satisfaction,		3	9

	£.	s.	d.
For every Scire Facias against Bail, with making up an Issue thereon or entering Judgment without Plea, including all Fees for every necessary Service thereon, provided that the party paying Cost shall not be subject to this, unless the Scire Facias is necessary and required by the Plaintiff,		6	0
For giving a Copy of the Record of any Cause when demanded by either of the Parties,		4	6
For every Order or Rule of Court, made on matters foreign to the Suit depending in Court, and Copy thereof if demanded,		2	0
For entering on the Minutes the Probate of Wills, qualifying Executors, making Certificates, recording the Will, and giving a Copy thereof,		8	0
For granting Administration, taking Bond, and all other Services thereon,		8	0
For proving and recording at length, in bound books to be kept for that purpose, and filing an Inventory, Account of a Sale or Account Current exhibited by an Executor, Administrator, or Guardian, or for Search, Copy and Certificate of the same, if the Estate be under 100*l.*	2	0	
If above,	4	0	
For every Marriage License and Bond,		8	0
For Ordinary License and Bond, and all Services necessary to be done therein,		8	0
For Tavern Rates,		2	0
For searching Record out of Court,		1	0
For proving or entering Acknowledgement of a Conveyance of Land or other Estate, and certifying the same with Order of Registration and Examination of a Feme Covert without Commission,		2	0
For a Commission to take the Examination of a Feme Covert or Witnesses in a Case depending in said Court, entering the Return thereon, and other necessary Services,		2	4
For a Guardian or other Bond taken in Court, including all Services,		6	0
For Indentures for binding out Apprentices, including all Fees for every Service necessary thereon,		6	0
For a Special Verdict, or Demurrer, or Motion in arrest of Judgment,		3	0
For a Writ of Error, or Appeal with the Transcript of the Records, and all Services necessary thereon,		8	0
For making out Certificates of Witness' Attendance,			8
For recording a Mark or Brand, and granting a Certificate thereof, if required,		1	0
For taking Security on issuing a Writ,		2	0
Entering the same with the Names of the Sureties,		2	0
Where any person petitioning for the Alteration of a Deed, Mesne Conveyance, or Bill of Sale, to be paid by the Petitioner,		5	0
For affixing the Seal to every Writing requiring the same,		2	6
For every Search in the Entry-Taker's Books,		1	0
for his Services in making out a Copy of every Location,		1	0

	L.	s.	d.
For issuing a Land Warrant, granting a Certificate, and affixing the Seal by Order of Court, -		4	0
For an Account taken, the same as Clerk and Master in Equity.			

CLERKS OF SUPERIOR COURTS.

Same Fees as Clerks of the County Courts, for the same Services.

The clerk of any court, sheriff, register, or coroner of any county, taking greater fees than the law allows, shall, upon second conviction, be removed from office.

If any of the inspectors of the several inspections in this state, shall take and receive any greater fees than are by law allowed, he or they so offending, shall, upon conviction thereof, forfeit and pay the sum of five pounds for each and every offence, to be recovered before any jurisdiction having cognizance thereof, by any person suing for the same, to the use of the prosecutor.

If any attorney or attornies shall presume to ask, take, or receive, directly or indirectly, any other or greater fees than are by law directed in all civil cases, it shall be deemed in such attorney or attornies a misdemeanor in his office or profession of an attorney; and such mal-practices being made known to any of the courts within this state, such court is hereby required to direct the attorney general or the solicitor, on behalf of the state, to carry on a prosecution by indictment for such malpractice aforesaid; and if any such attorney or attornies shall be thereupon convicted by the verdict of a jury, of taking any other or greater fees than are by law allowed, he or they shall in the same court in which such conviction shall be had, be thenceforth dismissed from his practice as an attorney, for one year, in every court of law and equity within this state.

All fees due or which may become due to the clerk of any court of record within this state, or to any sheriff or other officer, by sentence, judgment, or decree of any court aforesaid, shall be collected or suit commenced therefor, within three years from the date of such judgment, without an execution issued thereon, or within three years from the issuing of the last execution, and not after. Provided, that this act shall not extend to fees which may be due from persons residing out of this state.—*Acts* 1811, c. 19.

Any officer taking more than the law allows, may be indicted for extortion.

See *Extortion.*

FELONY.

Felony is an offence which occasions a total forfeiture of either lands or goods, or both, at the common law, and to which capital or other punishment may be superadded according to the degree of guilt.

All offences now capital are in some degree or other felony; and this is likewise the case with some offences which are not punished with death, as petty larceny or pilfering, for which the offender forfeits all his goods and chattels.

Capital punishment does by no means enter into the true idea and definition of felony. Felony may be without inflicting capital punishment, as in the instance above cited of petty larceny. And it is possible that capital punishment may be inflicted, and yet the offence be no felony: as standing mute without pleading to an indictment, which is capital, but without any forfeiture and therefore is not felony, which is capital by the ancient common law.

The true criterion of felony, is forfeiture. In all felonies which are punishable with death, the offender loses all his goods and chattels, and also in such as are not so punishable.

The idea indeed of felony is generally so connected with that of capital punishment, that we find it hard to separate them; and to this usage the interpretations of the law do now conform. And therefore if a statute or act of assembly makes any new offence felony, the law implies it shall be punished with death by hanging, as well as with forfeiture; unless the offender prays the benefit of clergy, which all felons are entitled once to have, unless the same is expressly taken away by some statute or act of assembly.

See *Arrest*, *Bail*, *Criminals*, *Commitment*, *Evidence*, *Indictment*, *Clergy*.

For the Form of a Warrant to arrest a Felon—See *Appendix*.

FEME COVERT.

Feme Covert is a law term used to signify a married woman, in contradistinction to feme sole, or a single woman.

A man cannot grant any thing to his wife, or enter into covenant with her; for the grant would be to suppose her separate existence; and to covenant with her would be only to covenant with himself. And therefore it is also generally

true, that all compacts made between husband and wife, when single, are void by the intermarriage. A woman indeed may be attorney for her husband; for that implies no separation from, but is rather a representation of her lord. And a husband may also bequeath any thing to his wife by will; for that cannot take effect till the coverture is determined by his death. The husband is bound to provide his wife with necessaries by law, as much as himself; and if she contracts debts for them, he is obliged to pay them. But for any things besides necessaries he is not chargeable. Also if a wife elopes and lives with another man, the husband is not chargeable even with necessaries, at least if the person who furnishes them is sufficiently apprised of her elopement. If the wife be indebted before marriage, the husband is bound afterwards to pay the debt, for he has adopted her and her circumstances together. If the wife be injured in her person or in her property, she can bring no action for redress without her husband's concurrence, and in his name as well as her own. Neither can she be sued without making the husband a defendant. There is indeed one case where the wife shall sue and be sued as feme sole, namely, where the husband has abjured the country or is banished; for then he is dead in law; and the husband being thus disabled to sue for or defend the wife, it would be most unreasonable if she had no remedy, or could make no defence at all. In criminal prosecutions, it is true the wife may be indicted and punished separately; for the union is only a civil union. But in trials of any sort they are not allowed to be evidence for or against each other; partly because it is impossible their testimony should be indifferent, but principally because of the union of persons. But where the offence is directly against the person of the wife, this rule has been usually dispensed with. And therefore by statute, in case a woman be forcibly taken away and married, she may be a witness against such her husband in order to convict him of felony; for in this case, she can with no propriety be reckoned his wife; because a main ingredient, her consent, was wanted to the contract. And also there is another maxim of law, that no man shall take advantage of his own wrong; which the ravisher here would do, if by forcibly marrying a woman, he could prevent her from being a witness who is perhaps the only witness to that very fact. All deeds executed and acts done by her during her coverture are void, except in the case hereafter mentioned. She cannot by will devise lands to her husband, unless under special circumstances; for at the time of making she is supposed

to be under his coercion. He may restrain her of her liberty in case of any gross misbehaviour; but he cannot confine or imprison her without cause, nor seize her person, nor force her to live with him where she is separated from him by articles, in consideration of money received by him. If he attempts to do so, it is a breach of the peace; and he may be indicted or she may be released by *habeas corpus*. If he prohibits a particular person to trust her, he shall not be charged by that person for her contracts after that prohibition. But a general notice in the gazette will not do. He is not chargeable when they separate by consent and he allows her a sufficient maintenance; the same being generally known in the neighbourhood where the husband lives. If he turns her away, and allows her no sufficient maintenance, he is liable for necessaries. So if he runs away from her, or forces her by cruelty or ill usage to go away from him. If he threatens to beat or kill her, she may make him find security for the peace.

If a woman commit theft, burglary, or other offence so created by the laws of society, by the coercion of her husband, or merely by his command, or even in his company, she is not guilty of any crime. But if she commit murder under such circumstances, or any other crime so constituted by the law of nature; or if she commit treason, she is guilty of that crime, and shall be punished accordingly. She may be indicted and set in the pillory with her husband for keeping a bawdy house. And in all cases where she offends alone, without the company or command of her husband, she is answerable for her offence as much as a single woman.

All conveyances in writing and sealed by a husband and wife, for any lands, and by them personally acknowledged before a judge of the superior court, or in the court of the county where the land lies, the wife being first privily examined before the judge, or some member of the county court, appointed by the said court for that purpose, whether she doth voluntarily assent thereto, and registered according to law, shall be valid in law to convey all the estate and title which such wife may or shall have in any lands, tenements, or hereditaments so conveyed, whether in fee simple, right of dower, or other estate. Where any such conveyance as aforesaid shall be acknowledged by the husband, or proved by the oath of one or more witnesses before a judge, or county court where the land lieth, and it shall be represented to the judge or the county court aforesaid, that the wife is a resident of any other county, or so aged or infirm that she cannot travel to the judge or county court to make such acknowledgement as aforesaid, it

shall and may be lawful for the said judge or county court, by his or their order, to direct the clerk of the county court where such land lieth, to issue a commission to two or more commissioners for receiving the acknowledgement of any deed of such feme covert, for passing her estate in any lands, tenements, or hereditaments. And such deed acknowledged before them, after they have examined her privily and apart from her husband, touching her consent, and certified to the county court to which the commission shall be returnable, shall by order of the county court be registered with the commission and return, and be as effectual as if personally acknowledged before the judge or county court by such feme covert.

Such Commission shall be in the following Form:—

State of North-Carolina, —— County.

To A, B, C, D, and E, greeting.

Whereas F. G. hath produced a deed of conveyance made to him from H. I. and K. his wife, of a certain tract or parcel of land lying and being in the county of , in the state of North-Carolina, and procured the same to be proved or acknowledged by the said H. I. before L. M. one of judges of the said state [or in the court of pleas and quarter sessions for the county aforesaid, as the case may be] and it being represented to the said judge [or to our said court] that K. the wife of the said H. I. is an inhabitant of the county of , in this state, [or is so aged that she cannot travel to the said judge, or to the said court, as the case may be] to be privily examined as to her free consent in executing the said conveyance. Therefore we command you or any two of you, that at such certain day and place as you shall think fit, you go to the said K. if she cannot conveniently come to you, and privily and apart from her husband, examine her the said K. whether she executed the said conveyance freely and of her own accord, without fear or compulsion of the said H. I. her husband. And the examination being distinctly and plainly written on the said deed, or on some paper annexed thereto,—and when you shall have so taken the said examination, you are to send the same closed up, under the seals of you or any two of you together with this writ, unto our said court of pleas and quarter sessions to be held for the county of aforesaid, on the Monday of next.

Witness N. O. clerk of our said court, at office, the day of , 18 .

N. O.....clerk.

All conveyances made under a power of attorney, from any feme covert residing without the state, by her freely executed jointly with her husband, shall be good to pass the estate and title of said feme covert in such lands, tenements, and hereditaments within this state, as are mentioned or included within such power of attorney, whether in fee simple, right of dower, or otherwise. Provided that every such power of attorney be separately acknowledged by the feme covert execu-

ting the same, and be duly proved in the same way that deeds of conveyance by feme coverts are required to be acknowledged and proved.

Where any conveyance for lands in this state, shall be made by husband and wife residing in any of the United States other than this state, or in any of the territories of the United States, and by them personally acknowledged before some one of the judges of the courts of supreme jurisdiction in said state or territory; or where the wife shall personally acknowledge such conveyance before two or more commissioners duly authorised to take such acknowledgment under a commission issued from some court of record in said state or territory, the wife being first privily examined before said judge or commissioners whether she doth voluntarily assent thereto, and an attestation of such acknowledgement endorsed on or affixed to said deed or commission, by the said judge or commissioners, and the certificate of the governor of the said state or territory duly authenticated and annexed to said deed that the judge before whom such acknowledgement was taken was, at the time of the taking thereof, one of the judges of the courts of supreme jurisdiction in said state or territory, or that the court which issued such commission is a court of record, and the person signing said commission is clerk of the said court, such deed shall, upon being exhibited to the court of pleas and quarter sessions of the county where such lands lie, or one of the judges of the superior courts, be ordered to be registered with the certificates and commission endorsed thereon, or annexed thereto; and when so registered, shall be valid; and shall be received in evidence in the courts of law and equity, without further proof.

Any deed for the conveyance of lands in this state, or any power of attorney to convey lands in this state, made by husband and wife who reside in foreign parts, or without the limits of the United States, which shall be personally acknowledged before the mayor, or other chief magistrate of any city, town, or corporation, the wife being first privily examined by such mayor or chief magistrate, whether she doth voluntarily assent thereto, shall upon being exhibited to the court of pleas and quarter sessions of the county where such land lies, or one of the judges of the superior courts of this state, be ordered to be registered, and shall be registered in the same manner as if such deed or power had been proved or acknowledged in open court of the county where the lands lie, and shall be valid; and when so registered, shall be received in evidence, without further proof.

FENCES.

Every planter shall make a sufficient fence about his cleared ground under cultivation, at least five feet high, unless where some navigable stream or deep water course shall be, that may be deemed sufficient instead of a fence aforesaid.

Upon complaint made by any person to any justice of the peace of the county, of any trespass or damage done by horses, cattle, or hogs, it shall and may be lawful for such justice, and he is hereby authorised and required to cause to be summoned two freeholders indifferently chosen, who together with himself, shall view and examine, on oath, whether the complainant's fence be sufficient or not, and what damage he hath sustained by means of the trespass, and certify the same under their hands and seals. And if it shall appear that the said fence be sufficient, then the owner of such horses, cattle, or hogs shall make full satisfaction for the trespass or damages to the party injured, to be recovered before any jurisdiction having cognizance thereof. But if it shall appear that the said fence be insufficient, then the owner of such horses, cattle, or hogs shall not be liable to make satisfaction for such injury or damage as aforesaid.

If any person whose fence shall be adjudged insufficient, shall with gun, dogs, or otherwise, unreasonably chase, worry, maim, or kill any horses, cattle, or hogs, or cause the same to be done, such person so offending shall make full satisfaction for all such damages to the party injured, to be recovered as aforesaid.

All persons neglecting during crop time to keep up and repair their fences in manner aforesaid, shall be liable to be indicted in the court of the county wherein such fields shall be situated; and upon conviction of such neglect shall pay for each offence such fine as the court shall think fit to impose, not to exceed however the sum of fifty pounds: which fines shall go to the use of the poor of the county wherein the recovery shall have been made. But the concurring testimony of three indifferent witnesses shall be necessary to the conviction.

If any slave shall kill any cattle, hog, or horse, not belonging to his master, in any cultivated field which is not fenced at all, or which is not under sufficient and lawful fence, he or she within any time within six months after, shall be liable to be apprehended on a warrant from any justice of the peace of the county, and on conviction before two of the neighbouring justices, shall be subject to and receive thirty-nine lashes on

his or her bare back. And the owner or overseer of such slave, so offending as aforesaid, shall on proof of the offence committed by such slave, pay all damages that shall be adjudged to have been sustained by the owner of the hog, horse, or cattle so killed as aforesaid, by any jurisdiction having cognizance thereof.

FERRIES—See *Roads and Ferries.*

FINES.

The several courts of pleas and quarter sessions in this state have power to remit or mitigate all forfeitures on recognizances previous to entering final judgment thereon; provided five of the justices of said county be present. And they have also power to remit or mitigate all fines by them inflicted; provided there are seven justices on the bench, and provided three of them shall have been present when the said fine was inflicted.

FIRE-HUNTING—See *Hunting.*

FIREWOOD.

All firewood sold in the towns established within this state by legislative authority, shall be sold by the cord and no otherwise, and each cord shall contain eight feet in length, four feet in height, and four feet in breadth, and shall be corded by the carter or seller, under the penalty of twenty shillings for each offence; to be recovered against the owner or seller, to the use of the informer.

FISH.

The courts of pleas and quarter sessions may and shall appoint commisioners to examine and lay off the rivers in their county. And where the river is a boundary between two counties, to lay off the river on the side of the county appointing such commissioners. And further, such commissioners shall in laying off the rivers allow three-fourths of such rivers for the owner or owners of the same, for the purpose of erecting stops, dams, and stands; and one-fourth

part, including the deepest water of the river and creeks, they shall leave open for the passage of fish, marking and designating the same in the best manner they can. And where any mill or mills are built across any such river or rivers, and slopes are or may be necessary, commissioners shall be appointed as above, who shall lay off such slope or slopes, and determine the length of time such shall be kept open. And such commissioners shall and they are required to return to their respective county courts, a plan of such falls, dams, and other parts of rivers as may have been thought necessary to survey as above.

All persons who shall hereafter erect any stand, dam, weir, or hedge in such part of the river as by law is required to be left open for the passage of fish, or who shall not make and keep open any such slope as the commissioners may judge necessary, shall forfeit and pay five pounds for every twenty-four hours any person shall keep up, erect, or make any such stop, dam, stand, weir, or hedge, or dam up or stop any such slope, to be recovered by any person suing for the same, one-half to his own use, the other half to be applied to the use of the county, either by warrant before a justice of the peace, or in a court of law, as the case may require.

It shall not be lawful for any person in this state to set or cause to be set any net of any description across the main channel of any navigable river or creek in this state, under the penalty of twenty pounds, to be recovered by any person suing for the same, to his or her own use, before any jurisdiction having cognizance thereof.

If any servant or slave shall be guilty of the aforesaid offence, without the knowledge or consent of his or her master or mistress, he or she so offending, shall have and receive thirty-nine lashes on his or her bare back.

There are many private acts varying the general law on this subject.

FORCIBLE ENTRY AND DETAINER.

A forcible entry is when one or more persons, furnished with unusual weapons, do violently enter the house or land of another; or do use violent and threatening words to the terror of another, or some other actual violence or terror, and by that means gain the possession; or if one or more do enter peaceably, and then forcibly put another out of his possession.

A forcible detainer is when one or more have entered peaceably, and detain the possession with force, with arms, or with an unusual number of people, or with threatenings to defend it.

The party grieved may have remedy three ways. 1st, By action of trespass, wherein he shall recover treble damages. 2dly, By indictment in the superior or county court, whereupon the offender shall be fined, and the party restored to his possession by a writ of restitution awarded by the court for that purpose, to the sheriff; or by indictment at the common law, wherein he shall be fined simply.—3 *Burr.* 1732. 3dly, By complaint to a justice of the peace.

With respect to the latter, or complaint to a justice, there are two ways of proceeding. The first way is when a forcible entry is made into any lands, tenements, or other possessions, for one or more justices of the county, taking sufficient power of the county, to go to the place so kept by force; and if he or they find any that hold such place forcibly, after a forcible entry made therein, he may commit the offender to jail until he pay a fine to the state; such fine to be laid by the justice; and he shall make a record of such force by him seen, which will be a sufficient conviction of the offenders, and the parties will not be allowed to traverse it. This record may be kept by him, or he may make two of them, keeping one, and certifying the other into the superior court. But when the proceeding is in this way, the justice cannot commit the offender, unless he see the force himself. The justice need not set the fine upon the spot; but may take a reasonable time to consider of it, for the commitment is to be till he has paid the fine. The fine must be laid upon every offender severally, and not upon them jointly. If however the fine be paid to the sheriff, or sureties be found by recognizance for the payment thereof, the justice may release the offender from imprisonment.

The justice ought to proceed upon information or knowledge of such force, though no complaint be made to him by the party grieved. All persons upon notice, as well the sheriff as others, must attend upon the justice, and assist him to arrest the offenders, or they shall be fined and imprisoned upon indictment for disobedience in the county court or superior court. If the doors be shut, and those within refuse entrance to the justice, he may break open the doors to remove the force.

By this mode of proceeding the party ousted cannot be restored to his possession by the justice's view of the force, nor can the justice proceed in this way against those who entered

peaceably, nor if the parties are gone before the justice comes to the place.

The second way is for the justice upon complaint made to him of any such entry or detainer, to make out his warrant to the sheriff, commanding him to summon and bring before him a sufficient number of freeholders dwelling in the neighbourhood of the lands so entered, usually twenty-four, and upon twelve appearing, to swear them to enquire of such forcible entry or detainer; and upon their finding force, to cause the lands to be re-seized, and to put the party disseized into possession, without enquiring into the title of either party. This may be done as well in the absence as in the presence of the offender, after calling to answer for himself.

But if after the jury have found a forcible entry, or a forcible detainer, the defendant tender a plea in writing, denying the force, or setting forth that he has been three years in possession next before the day of the inquisition found, the justice cannot make restitution till that plea be tried.

If such a plea be tendered, the justice may proceed in one of these two ways, namely, he may either stop there and certify the inquisition and all the proceedings, into the superior court, after binding over the witnesses to appear there; or he may issue his precept to the sheriff, commanding him to summon a jury as before, to try the issue, and to bring them before him; and after they appear, to swear twelve of them to that issue, and if they find the force stated in the inquisition, then to cause restitution to be made either in person or by the sheriff, having his warrant for that purpose. All which may be done the next day, or any day after the inquisition found, and shall be at the expense of him who tenders the plea. Such restitution is made by putting out all such offenders who shall be in the house or upon the lands.

The force necessary to make an entry or detainer forcible, must not be an implied one, but must be attended with some circumstance of actual violence or terror, as by beating the person in possession, or breaking open the doors of a house, not the bare drawing of a latch, or pulling back the bolt of a door, or opening it with a key, or going in at a window, if not done with strong hand, or multitude of people; or it may be a threatening behaviour or speech, at the time of entry, giving those in possession just cause to fear the doing of some bodily hurt, or by carrrying with him an unusual number of attendants, or arming himself in a manner which intimates a design of force, or by threatening to kill, maim, or

beat, or giving out speeches implying such a design as that he will keep the possession in spite of every body, or the like.

But it seems that no entry shall be judged forcible from any threatening to spoil another's *goods*, or to destroy his cattle, or to do him any other such like damage, which is not personal. 1 *Haw.* 146.

However it is clear, that it may be committed by a single person, as well as by twenty.—1 *Haw.* 146.

But nevertheless all those who accompany a man, when he makes a forcible entry, shall be judged to enter with him, whether they actually come upon the lands or not.—1 *Haw.* 144.

It seemeth certain, that the same circumstances of violence or terror which will make an entry forcible, will make a detainer forcible also. And a detainer may be forcible, whether the entry were forcible or not.—1 *Haw.* 146.

If a man's wife, children, or servants do continue in the house or upon the land, he is not ousted of his possession; but his cattle being upon the ground, do not preserve his possession.—*Dalt.* c. 132.

If a forcible entry or detainer shall be made by three or more persons, it is also a riot and may be proceded against as such.—2 *Cro.* 151.

Form of the Record of a Forcible Entry and Detainer on View of the Justices.

State of North-Carolina, Wake County.

Be it remembered, that on the day of , in the year of our Lord , at , in the county aforesaid, A B complained to us, B C, C D, and D E, justices of the peace for the county aforesaid, that E F and F G, late of , into the messuage of him the said A B, being the mansion house of him the said A B, called [if it has a particular name] , situate within the county aforesaid, did enter, and him the said A B of the messuage aforesaid, whereof the said A B at the time of the entry aforesaid, was seized as of the freehold of him the said A B for the term of his life, unlawfully ejected, expelled, and amoved, and the said messuage from him the said A B unlawfully, with strong hand and armed power, do yet hold, and from him detain, against the form of the statute in such case made and provided. Whereupon the said A B, then, to wit, on the said day of , at ; in the county aforesaid, prayeth of us, so as aforesaid being justices, to him in this behalf, that a due remedy be provided, according to the form of the statute aforesaid. Which complaint and prayer by us the aforesaid justices being heard, we the aforsesaid B C, C D, and D E, justices aforesaid, to the messuage aforesaid personally have come, and do then and there find and see the aforesaid E F and F G the aforesaid messuage, with force and arms, unlawfully, with strong hand and armed power, detaining against the form of the statute in such case made and provided, according as he the said A B so as is aforesaid hath unto us complained. Therefore it is considered by us the aforesaid justices, that the aforesaid

E F and F G of the detaining aforesaid with strong hand, by our own proper view then and there as is aforesaid had, are convicted, and every of them is convicted, according to the form of the statute aforesaid.—Whereupon we the Justices aforesaid, upon every of the aforesaid E F and F G do set and impose severally a fine of , good and lawful money of North-Carolina, to be paid by them and every of them severally to the Governor, for the said offences; and do cause them, and every of them, then and there to be arrested. And the said E F and F G being convicted, and every of them being convicted upon our proper view, of the detaining aforesaid, with strong hand as is aforesaid, by us the aforesaid justices are committed, and every of them is committed to the common jail of the county aforesaid, being the next jail to the messuage aforesaid, there to abide respectively, until they have paid their several fines respectively, to the said governor for their respective offences aforesaid. Concerning which the premises aforesaid, we do make this our record. In witness whereof, we the aforesaid B C, C D, and D E, esquires, the justices aforesaid, to this record our hands and seals do set, at aforesaid, in the county aforesaid, on the day of , in the year of our Lord

B. C.....(seal.)
C. D.....(seal.)
D. E.....(seal.)

Mittimus for Forcible Detainer.

State of North-Carolina, Wake County.

A B, Esq. one of the Justices of the Peace for the said County, to the Keeper of the Common Jail, at , in the County aforesaid, greeting.

Whereas upon complaint made unto me this present day, B C, of , in the county aforesaid, planter, I went immediately to the dwelling-house of him the said B C, at aforesaid, in the county aforesaid, and there found A O, late of , labourer, B O, of , weaver, and C O, late of , butcher, forcibly with strong hand and armed power, holding the said house, against the peace of the state, and against the form of the statute in such case made and provided. Therefore I send you by the bringers hereof, the bodies of the said A O, B O, and C O, convicted of the said forcible holding, by my own view, testimony and record, commanding you to receive them into your said jail, and there safely to keep them, and every of them respectively, untill they shall have respectively paid the several sums of pounds, of good and lawful money of North-Carolina, to the governor of the state, which I have set and imposed upon every of them separately, for a fine and ransom for their said trespasses respectively. Herein fail not, at the peril that may follow thereof.

Given at aforesaid, in the county aforesaid, under my hand and seal, the day of , in the year of our Lord

A. B.....(seal.)

Precept to the Sheriff to return a Jury.

State of North-Carolina, Wake County.

A B, Esq. one of the Justices of the Peace for the County aforesaid, to the Sheriff of the said county, greeting.

I command you, that you cause to come before me at , in the county aforesaid, on the day of next ensuing, twenty-four sufficient and indifferent men, of the neighborhood of aforesaid, in the county aforesaid, being freeholders, to enquire upon their oaths, of a certain entry made with strong hand (as it is said) in the messuage of one A I, at aforesaid, in the county aforesaid, against the form of the statute in such case made and provided. And you are to return upon every of the jurors by you in this behalf to be impannelled, twenty shillings of issues at the aforesaid day. And have you then and there this precept. And this you shall in no wise omit, upon the peril that shall thereof ensue.

Witness the said A B, at , in the county aforesaid, the day of , in the year of our Lord

The Jurors' Oath.

THE FOREMAN.

You shall true inquiry and presentment make of all such things as shall come before you, concerning a forcible entry [or detainer] said to have been lately committed in the dwelling-house of planter, at , in this county. You shall spare no one for favour or affection nor grieve any one for hatred or ill will; but proceed herein according to the best of your knowledge, and according to the evidence that shall be given to you, So help you God.

THE OTHER JURORS.

The oath that A F your foreman hath taken on his part, you and every of you shall truly observe, and keep on your parts. So help you God.

The Inquisition or Finding of the Jury.

State of North-Carolina, Wake County.

An inquisition for the state, indented and taken at , in the said county, the day of , in the year of our Lord , by the oaths of C D, E F, &c. good and lawful men of the said county, before A B, esquire, one of the justices of the peace for the county aforesaid, who say upon their oaths aforesaid, that A I of aforesaid, planter, long since lawfully and peaceably was seised in his demesne as of fee [if not freehold, then say, possessed] of and in one messuage, with the appurtenances, in aforesaid, in the county aforesaid, and his said possession [and seisin] so continued until A O late of planter, B O late of the same, planter, and C O late of the same, planter, and other malefactors unknown, the day of now last past, with strong hand and armed power, into the messuage aforesaid, with the appurtenances aforesaid, did enter, and him the said A I thereof disseised, and with strong

hand expelled; and him the said A I so disseised and expelled from the said messuage with the appurtenances aforesaid, from the said day of , until the taking of this inquisition, with like strong hand and armed power did keep out, and do yet keep out, to the great disturbance of the peace of the state, and against the form of the statute in that case made and provided.

In testimony whereof as well the said justice as the inquest above named to this inquisition have interchangeably set their hands and seals the day and year above written.

(Seal.) A. B.

C. D.....(seal.)
E. F.....(seal.)
&c: &c.

Warrant to the Sheriff for Restitution.

State of North-Carolina, Wake County.

A B, Esquire, one of the Justices of the Peace for the said County, to the Sheriff of the said county, greeting.

Whereas, by an inquisition taken before me the justice aforesaid, at , in the county aforesaid, on this present day of , in the year of our Lord , upon the oaths of C D, E F, &c. and by virtue of the statutes made and provided in cases of forcible entry and detainer, it is found that A O late of , planter, and B O late of , planter; on the day of now last past, into a certain messuage, with the appurtenances, of A I of aforesaid, in the county aforesaid, planter, situate, lying, and being at aforesaid, in the county aforesaid, with force and arms did enter, and him the said A I thereof then with strong hand did disseize and drive out, and him the said A I thus driven out from the aforesaid messuage with the appurtenances, from the day of aforesaid to this present day of taking the inquisition, with strong hand and armed force did keep out, and do yet keep out, as by the inquisition aforesaid more fully appeareth of record. Therefore on behalf of the state, I charge and command you, that taking with you the power of the county (if it be needful) you go to the said messuage and other the premises, and the same with the appurtenances you cause to be reseized, and that you cause the said A I to be restored and put into his full possession thereof, according as he, before the entry aforesaid was seized, according to the form of the said statutes. And this you shall in no wise omit, on the penalty therein incumbent.

Given under my hand and seal the day of , in the year of our Lord

A. B.....(seal.)

Oath to a Jury on a Traverse.

You shall well and truly try this issue of traverse, between the state and C D, E F, &c. for a forcible entry and detainer, wherewith they stand charged, and a true verdict give according to your evidence. So help you God.

FORESTALLING.

By false reports to lower the price of our native commodities, is fineable. So also all endeavors to enhance the common price of any merchandize, and all practices which have an apparent tendency thereto, are punishable by fine and imprisonment. No one can lawfully buy within the county, any merchandize in gross, and sell the same in gross again, without being liable to indictment; and the bare engrossing of a whole commodity, with intent to sell at an unreasonable price, is indictable.

The statutes made against this offence are local statutes, confined to England and Wales, and therefore not in force here.

FORGERY.

Forgery at the common law, is the fraudulent making or altering of a writing, to the prejudice of another man's right. For which the offender may suffer fine, imprisonment, and pillory.

By statute, if any person shall forge or counterfeit the stamp, note, or receipt of any inspector, or offer for sale or payment, or demand of any inspector, tobacco, or any such forged note or receipt, knowing it to be such; or shall cause to be exported any hogshead or cask of tobacco stamped with a forged or counterfeit stamp, or shall take any stave, plank, or heading out of any hogshead of tobacco, stamped according to law, after such hogshead shall have been delivered from any of the public warehouses, every person so offending, and being thereof legally convicted, shall be adjudged a felon, and suffer as in cases of felony. And if any inspector's note shall be lost or destroyed, the owner thereof may, on oath before a magistrate, obtain a certificate from the justice administering such oath, and shall thereby be entitled to receive the tobacco for which the lost note was given; and if any person shall be convicted of producing a forged certificate, in such case, knowing the same to be forged, he shall suffer as in case of wilful and corrupt perjury.—*Acts* 1777, *c.* 12.

If any person or persons, of their own head and imagination, or by false conspiracy or fraud with others shall wittingly and falsely forge or make, or cause or wittingly assent to be forged or made, or shall show forth in evidence

knowing the same to be forged, any deed, lease, or will, or any bond, writing obligatory, bill of exchange, promisory note, or assignment thereof, or any acquittance or receipt for money or goods, or any receipt or release for any bond, note, bill, or any other security for the payment of money, or any order for the payment of money or delivery of goods, with intent, in either or any of the said instances, to defraud any person or corporation, and shall thereof be convicted, in any of the superior courts of law in this state, such person so offending, shall, for the first offence, be adjudged to stand in the pillory one hour and receive thirty-nine lashes on his bare back, and be imprisoned not less than six months, and fined at the discretion of the court; and for the second offence, shall, on conviction, suffer death without benefit of clergy.—*Acts* 1801, *c.* 6.

See *Counterfeiting*, *Marriages*.

FORNICATION—See *Vice and Immorality*.

FRAUD.

Fraud, covin, collusion, and deceit are often used as synonymous words, and in whatever shape or form they appear, are always deemed odious in the eye of the law.

Gross frauds are punishable by way of indictment—See *Cheats*.

And it is declared by act of assembly, that when any fraud or deceit shall be committed in or upon any of the public officers of this state, the person appointed to, or who has the charge of such office, shall give immediate information thereof to the attorney or solicitor general, as the case may be, whose duty it shall be when such fraud or deceit shall be an indictable offence to take all legal measures to prosecute the person or persons so offending, with effect.

As to the *civil* restraints imposed by our acts of assembly in cases of fraudulent conveyances and concealment of property, the following is a summary.

Every feoffment, gift, grant, alienation, bargain & conveyance of lands or chattels, by writing or otherwise; and every bond, suit, judgment, and execution, made or had to or for any intent or purpose to delay, hinder, or defraud creditors and others of their lawful actions, debts, and accounts, shall be deemed and taken (only as against that person or persons,

his or their heirs, executors, administrators, or assigns, whose actions, suits, debts, accounts, damages, penalties, & forfeitures shall relieve by such covenous or fraudulent devices and practices, or shall or might be in any wise disturbed, hindered, delayed, or defrauded,) to be utterly void. Any the parties to such fraudulent feoffments, &c. as aforesaid, and being privy and knowing of the same, who shall wittingly put in use, maintain, avow, justify, or defend the same, as true, and done, had, or made *bona fide*, and upon good consideration; or shall alien or assign any lands or chattels to him or them, conveyed as aforesaid, shall forfeit the real value of said lands and tenements, goods and chattels, one moiety thereof to the state, and the other to the party grieved.

When the Sheriff of any county of this state, returns on an execution in his hands that there is no property to be found belonging to the defendant, in his county, and it is suggested by the plaintiff that the defendant has fraudulently made away with his property, for the purpose of avoiding the payment of the execution, notice in the nature of a *scire facias*, on motion of the party plaintiff shall be directed by the court to issue to the person in whose hands such property is supposed to be held, and on the return of the *scire facias*, executed as another original process, an issue shall be made up whether any fraud or concealment of his property hath been made by the defendant to the person cited, or whether the same hath been made over to avoid the recovery aforesaid, without just and valuable consideration; and if the jury shall find such fraud, concealment, or making over as aforesaid, they shall also specify the property so fraudulently concealed or made over, and execution shall issue against the same in the hands of the person notified.

Upon any judgment of any court of record in this state, if the plaintiff will, by himself or his agent or attorney in fact, make an affidavit stating that the defendant has no visible property to satisfy the same, or on which an execution can be levied, and that he has good reason to believe that the defendant has fraudulently conveyed his property to avoid or delay the payment of his just debts, or that some other person is in possession of property belonging to the defendant, and conceals the same, the court in which the said judgment hath been or shall be rendered, shall at any time while said judgment is in force, order a *scire facias* to be issued against and served on the person claiming any estate real or personal, under any such conveyance; or against any person charged in the affidavit with concealing any money or estate, for the use

of the defendant, or for the purpose of avoiding or defraying the payment of his just debts; in which he shall be commanded to appear at the next succeeding term, and declare upon oath, in writing, whether he holds, or is in possession of, or claims title to any money, goods, or other estate, real or personal, under any conveyance made by the defendant upon any secret trust; and whether he holds any money or estate, or did at the time of rendering said judgment, or has at any time since, under a secret delivery, to hold the same for the use of the defendant or any other person, to enable him to avoid the payment of his just debts. And if the *scire facias* shall be returned, served by the delivery of a copy to the party against whom it issues, or by leaving a copy at his dwelling, and the party shall appear, the court shall proceed to require a declaration, from him on oath as aforesaid; and if he acknowledge that he does hold or claim property of the defendant in manner aforesaid, the court shall order the same to be delivered up or made subject to the judgment of the plaintiff; or in case the same or any part thereof shall be money, or in case any part of the property shall have been used, wasted or destroyed by the party, the court may give judgment for the plaintiff against such party, for the amount of the money then held, or which has been used, as also for the value of any property (to be ascertained by a jury) used wasted, or destroyed, and acknowledged as aforesaid to have been received in manner and for the use aforesaid, but in case any person called into court in manner aforesaid, shall deny the said suggestions, the plaintiff may, if he thinks proper, require an issue to be made up, and the facts tried by a jury as in other cases, and judgment shall be given accordingly with costs; and if a verdict and judgment shall be given in favour of the person so called in, or if he be discharged by his declaration on oath, without the trial of an issue, he shall be entitled to the same costs as if he had been originally sued in said action.

If the party, notified as aforesaid, shall fail to appear, the plaintiff may enter against him a judgment by default. But before executing any writ of inquiry, or entering up final judgment, a second *scire facis* shall issue to the party requiring him to appear or show cause why final judgment should not be entered up for the amount of the plaintiff's demand, or the amount charged in the affidavit to be in the hands or possession of such party: upon service of which *scire facias* the plaintiff may enter up judgment against said party with costs.

When a judgment shall be given by a justice of the peace out of court, the plaintiff may make a similar affidavit; upon which he shall be entitled to carry up to the next succeeding court of pleas and quarter sessions to be held for the county in which said judgment is given, with the affidavit, the judgment, and all papers relating thereto; and upon which the said court, upon motion made by the plaintiff, shall order a *scire facias* in manner aforesaid, which shall be proceeded on in the same manner as if the suit had been originally instituted in said court.

All conveyances made fraudulently to children or otherwise with an intention to defeat the widow of her dower, are void.

FREE NEGROES, MULATTOES, AND PERSONS OF MIXED BLOOD.

Any free negro or mulatto intermarrying or cohabiting with any slave, without consent in writing of the owner, attested by two justices of the peace, shall pay to the owner ten pounds; and on failure to pay, shall serve the owner one year.

Any free negro or mulatto entertaining a slave in his or her house, during the Sabbath or in the night, between sunset and sunrise, shall pay twenty shillings for the first offence, and forty shillings for every after offence, to be recovered on conviction before a justice of the peace, subject to appeal; and being unable to pay the fine, the constable attending at such conviction, shall hire out such free negro or mulatto, to the person who will take him or her for the shortest space of time in payment of the fine and costs, previously advertising the same ten days at least at the door of the courthouse, and other public places of the county; and the hirer shall pay at the time and place of hiring, the fine and costs.

The master or commander of a vessel entertaining any slave, negro, or mulatto on board his vessel, or any merchant or trader within this state, harbouring or trading with any slave, free negro, or mulatto, in their storehouses, shops, or tenements wherein they keep goods and merchandize, at any time between sunset and sunrise, or on the Sabbath, unless belonging to the vessel, or having a pass from the owner or some justice of the peace, expressing the time when and the business for which they go; such slave, negro, or mulatto found on board any vessel, in any bay, harbour, creek or river at the times aforesaid, shall be presumed to have been disposing of stolen goods; and the master or commander of the

vessel, or the merchant or trader, for such harbouring or trading, on complaint and conviction before two justices of the peace, shall pay a fine of five pounds for the first offence, and ten pounds for every succeeding offence; subject to appeal to the county court, where the determination shall be final.

The penalties in the above clauses shall be one-half to the use of the prosecutor, the other half to the patrollers of the district.

If any free person of colour shall come into this state, by land or water, he she, or they shall be compelled to give bond and security to the sheriff, payable to the governor for the use of the state, in the sum of 200*l.* for his, her, or their good behaviour, during the time he, she, or they may remain in this state; and it is hereby declared to be the duty of the sheriff to apply to the above described persons, and take from them a bond as aforesaid; and if any person so applied to should refuse to give such bond, the sheriff of the county where the person applied to, for the time being resides, shall be, and is hereby authorised and directed to take him, her, or them into custody, and confine them and every of them in the jail of the county, until the ensuing court, when it shall be the duty of said court to empannel a jury, to enquire whether the person so confined comes within the meaning and purview of the law; and if the said jury shall find that such person does come within the meaning of the law, then and in that case the court shall compel such person to give bond as aforesaid for his, her, or their good behaviour: and upon failing so to do, the court shall order such person to be sold for the benefit of the state, at public auction.

It shall be the duty of the several county courts in the state, to charge the grand juries of the respective counties to make presentment of all such free persons of colour as conduct themselves so as to become dangerous to the peace and good order of the state and county; upon which said presentment it shall be the duty of the court, to whom the same is made, to issue an order to the sheriff to take into custody the person so presented, and him safely keep until the next county court, when a jury shall be empannelled, as by law directed, and a trial agreeably thereto had; and if any person shall be found guilty on such trial, he shall be compelled to give bond and security, as in cases of persons coming into this state contrary to law; and in case of failure of the person so found guilty to give bond, he, she, or they shall be sold, for the use and in the manner aforementioned.

When any number of negroes, or other slaves, or free people of colour, shall collect together in arms, and be going about the country, committing thefts and alarming the inhabitants of any county, it shall be the duty of the commanding officer of such county or captain of a troop of horse, upon three or more justices of the peace requiring it, to report the same immediately to the governor, who shall thereon take the necessary measures, by ordering out a sufficient body of the militia to preserve and ensure the public safety; which detachment of militia shall be under the same rules and regulations, as in cases of invasion and insurrection, and shall be entitled to receive the same pay and rations as the troops of the United States when in actual service. And if any person shall be wounded or disabled in suppressing such insurrection, he shall be provided for at the public expense, in the same manner as heretofore practised in this state.

Any person or persons who shall hereafter by violence or any other means, take or convey any free negro or free negroes or persons of mixed blood out of this state to another, with an intention to sell or dispose of such free negro or free negroes, or persons of mixed blood, and being thereof legally convicted, or shall upon his arraignment peremptorily challenge more than thirty-five jurors, or shall stand mute, shall be judged guilty of felony, and shall suffer death without benefit of clergy.

This act is amended as follows. Whereas by the above recited act, no penalty is annexed to stealing, carrying off, and selling free negroes and mulattoes within the limits of this state:—for remedy whereof, be it enacted that any person or persons who shall hereafter steal or sell any free negro or free negroes, or persons of mixed blood, knowing the same to be free or stolen; or shall by violence, seduction, or any other means, take or convey any free negro or free negroes, or persons of mixed blood, from any part of this state to another, with an intention to sell or dispose of such free negro or free negroes, or persons of mixed blood, or appropriate the same to his, her, or their use, and being thereof legally convicted, shall for every such offence be fined not less than fifty pounds nor more than 500*l.* and imprisoned not less than three months nor more than eighteen months; any thing in the before recited act notwithstanding.—*Acts* 1800, c. 22.

No person shall grant permission for any meeting of the negroes of others, or people of colour, at his, her, or their houses, or on his, her, or their plantation, for the purpose of drinking or dancing, under the penalty of ten pounds; unless

such slave have a special permit for that purpose from his or her owner.

All persons who are permitted to liberate their slaves, either by an act of assembly or by the county courts, shall enter into bond in the sum of 100*l.* for each slave so liberated, with approved security, payable to the chairman of the court and his successors, for the use of the poor of the county in which the slave may reside, that such slave shall not become chargeable on the parish or county, previous to his having the same effected. And every person failing for six months, after the slave shall be so set free, to give such bond, shall forfeit 300*l.* to the wardens of the poor.

By an act of congress.—"From and after the first day of January, 1808, it shall not be lawful to import or bring into the United States or the territories thereof from any foreign kingdom, place, or country, any negro, mulatto, or person of colour, with intent to hold, sell, or dispose of such negro, mulatto, or person of colour, as a slave, or to be held to service or labour, under the penalty of $ 5,000."

See *Slaves*, *Woods*, *Witnesses*, *Insolvent Debtors*.

FUGITIVES.

Any two justices of the peace, on satisfactory evidence adduced, that any fugitive has committed within the United States any pettit larceny or other offence, the punishment whereof shall extend to affect life, limb, or member, shall have power to commit such fugitive to any jail within this state, for the space of six months, unless sooner demanded, agreeably to the directions of an act of congress in such case provided. And if no demand is made within said term of time, then the said fugitive shall be again liberated.

GAMING.

All public gaming tables, such as E O, A B, and A B C, faro bank, pass-die tables, and all others of whatever nature, or by whatever name or denomination they shall be called, (billiard tables excepted) are totally forbidden, to be used in this state by any person or persons whatsoever. And all justices of the peace, and the commissioners of police in the

several towns of this state, are hereby authorised and directed in case of information made to them, or any of them, on oath, that such gaming table is in the possession and use of some person within the limit of their jurisdiction, to destroy and annihilate the same by every means in their power. And each and every person who shall offer to keep up or use the same, shall be subject to the penalty of 1,000*l.* to be recovered in an action of debt by any person suing for the same, the one-half thereof to be appropriated to the use of the party informing, the other half to the use of the state.

Sect. 1. All monies exhibited for the purpose of alluring persons to bet against, at any game; and all monies actually staked or betted whatsoever; and all species of other property shall be liable to be seized by any justice or justices of the peace, or by any other persons under a warrant from a justice of the peace, wheresoever the same may be found; and all such monies so seized shall be accounted for and paid by the person or persons making the seizure, to the wardens of the poor of the county wherein the seizure shall be made, and applied by the wardens in aid of the poor tax, deducting thereout fifty per cent upon all monies so seized, to be paid to the person or persons making the said seizure.

§ 2. All gaming tables of what name or denomination they shall be called, (except billiard tables) are totally forbidden to be used in this state by any person or persons whatever. And all justices of the peace, commissioners of police, sheriffs, or constables, are hereby authorised and directed in case of information made to them, to seize and destroy the same, by every means in their power.

§ 3. Any person whatsoever who shall suffer any of the games played at the tables commonly called A B C, E O, or faro bank, or any other gaming table or bank of the same or like kind, under any denomination whatever, to be played in his or her house, or in a house of which he or she hath at the time the use or possession, shall for every such offence, forfeit and pay the sum of 100*l.* to be recovered in any court of record, by any person suing for the same.

§ 4. Any person who shall oppose the destruction of any of said tables, or the seizure of any such monies as above described, by any person or persons so authorised to make it, shall be liable to a penalty of 500*l.* to be recovered in any court of record, for the use of the state; and shall be further liable to the action of any party grieved by such opposition. And any person or persons who shall take or carry away any part of the said money after the said seizure shall be declared, shall be

guilty of a misdemeanor, and liable to be indicted or presented therefor, and on conviction fined at the discretion of the court trying the same.

§ 5. It shall be the duty of the judges of the superior courts, and justices of the county courts, to give this law in charge to the grand jury, at the time when such grand jury shall be sworn.—*Acts* 1798, c. 19.

Every promise, agreement, note, bill, bond, or other contract to pay, deliver, or secure money or other thing won or obtained by playing at cards, dice, tables, tennis, bowls, or other games, or by wagering or betting on either of the parties who shall play at such games, or to repay or secure money or other thing lent or advanced for that purpose, or lent or advanced at the time of such gaming, playing, betting, laying, or adventuring, or by wagering or betting on a horse-race, or to repay or secure money or other thing lent or advanced for that purpose at the time of such betting or adventuring, shall be void. And every conveyance or lease of land, tenements, or hereditaments, sold, demised, or mortgaged, and every sale, mortgage, or other transfer of slaves or other personal estate, to any person, or for his use, to satisfy or secure money so won, lent, or advanced, on due proof made before any jurisdiction having cogizance thereof, shall be and is hereby declared void.—*Acts* 1788, c. 5, and 1810, c. 14.

All persons who shall play at any game of cards in any public-house or tavern, and bet any money or property, whether the same be in stake or not, or any person who shall bet on any game at cards, shall forfeit for each offence the sum of forty shillings; one-half to the informer, the other half to the use of the poor of the county. And if any keeper of a public-house or tavern shall knowingly suffer or willingly permit any game of cards to be played in said public-house or tavern, for money or property, he shall forfeit the sum of five pounds for every offence, to the uses aforesaid—*Acts* 1799, c. 12.

It shall be the special duty of sheriffs of each county in this state to sue for and recover, in the name of the governor for the time being, the penalty set forth in acts of 1798, c. 19, § 3, from any person who may suffer any of the games therein mentioned to be played in his or her house; for which services the sheriff so suing and recovering, shall be allowed twenty per cent; and every sheriff who shall, after information to him made or after the fact shall come to his knowledge, fail to sue for and perform the duties by this act required,

shall forfeit twenty-five pounds to the use of the person suing for the same.—*Acts* 1800, c. 10.

If any tavern keeper, ordinary keeper, or keeper of a house of entertainment, shall suffer any of the games mentioned in the several acts of the general assembly of this state to prevent excessive gaming to be played in his or her dwelling house, or in any out house, or on any part of the premises whereon he or she lives, or shall furnish such persons with drink, or any thing for their comfort and subsistence during their time of playing, he or she shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined a sum not less than five pounds. And every person playing at any of the said games, in manner above described, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined not less than five pounds.—*Acts* 1801, c. 17.

GAOLS—See *Prison and Prisoners.*

GIFTS.

Deeds of Gift of any estate of whatsoever nature, shall be proved in due form in the county court, and recorded in twelve months after the making, or shall be void.

This is the general and standing provision in the law; but the legislature is in the habit of extending the time for the probate and registration of deeds.

No gift hereafter to be made of any slave or slaves shall be good, unless the same shall be made in writing, signed by the donor, and attested by at least one credible subscribing witness; and unless the said writing shall be proved or acknowledged as conveyances of land, and registered in the office of the public register of the county where the donee resides, within one year after the execution thereof, if the donee be in the actual possession of such slaves; but if, under any special agreement made at the time of the gift, the donor shall remain in possession of the slaves, then the said writing shall be proved or acknowledged, and registered within the time aforesaid, in the county where the donor resides.

On all trials where such writings shall be introduced to support the title of either party, the due and fair execution of the same shall be proved by the subscribing witness; but if such witness shall be dead or removed out of the state, then the probate or acknowledgement and registration of such writing may be given in evidence.

Every person claiming title to any slave by virtue of a parol gift heretofore made, shall commence and prosecute his or her suit for the same, within three years from the passing of this act, otherwise the same shall be forever barred. Provided however, that infants, femes covert, persons *non compos mentis*, imprisoned, or beyond seas, shall have three years for bringing suit, after their disability &c. shall be removed. Provided also, that when any person shall have put into the actual possession of his or her child or children, any slave or slaves, and the said slave or slaves shall remain in the possession of such child or children at the time of the death of such person, he or she dying intestate, such slave or slaves shall be considered as an advancement to such child or children.—*Acts* 1806.

GRANTS AND DEEDS.

Whenever there has been or hereafter may be an error by the surveyor in platting or making out the certificate to the secretary's office, or the secretary shall mistake in making out the courses agreeably to the said returns, or shall misname the claimant or otherwise so as such claimant shall be injured thereby, the claimant so injured shall prefer a petition to the county court of pleas and quarter sessions where such land is situated, setting forth the injury he, she, or they might sustain in consequence of such error or mistake, with all and singular the matters and things relative thereto; and the said court is hereby authorized to hear testimony respecting the truth of the allegations set forth in the said petition: and if it shall appear to them by said testimony, or from the returns of the surveyor, or error of the secretary, that the patentee of such lands is liable to be injured thereby, such court is hereby required to direct their clerk to certify such facts as appear to their satisfaction to the secretary of state, who shall file the same in his office, and correct such error in the patent, likewise on the records in his office; for which service he shall receive four shillings for each and every patent so altered as aforesaid, except where the error was committed by the secretary.

Any person who discovers there is an error in the registration of his, her, or their grants or mesne conveyances, shall be at liberty to prefer a petition to the county court, in the same manner as before directed; and on hearing the same, if it appears to the satisfaction of the court that error has been

made; they are directed and required to order the register of the county to correct such error so made, and make the records by him kept conformably to the grant, mesne conveyance, bill of sale, or other instrument of writing, in which it appears such mistake has been so made. But a majority of the acting justices of the said court shall be present on the hearing of such petitions, and such petitioner shall prove to the court that he has notified every person having lands adjoining those mentioned in the petition, thirty days previous to preferring the same, and that he has notified every person who claims title to the land described in his said petition. Any person who may be dissatisfied with the judgment of any county court on his, her, or their petition, shall be at liberty to appeal to the superior court as in other cases, and no petition shall be set for hearing the first term.

Where any person petitions for the alteration of a deed, mesne conveyance, or bill of sale, the same notice shall be given to the grantor of such deed or mesne conveyance.

The clerks of the county courts where such petition shall be preferred, shall receive the sum of five shillings for his services on each petition, and no more, to be paid by the party petitioning.

The county courts when they think necessary shall order the surveyor, and five freeholders who are not interested to examine and survey any disputed lands, to ascertain the lines, and to make return thereof to the said court on oath. The expense to be paid by the party petitioning as aforesaid.

Seven, or a majority of the acting justices of the peace in any county of this state, who shall not be connected with the contending parties either by affinity or consanguinity, shall be considered a sufficient number to constitute a quorum, to hear and determine on all petitions authorised by law.

It shall and may be lawful for the several county courts within this state, on the representation of the original grantees, or their legal representatives or assigns, or persons claiming by, from or under their grant or grants, either by descent, devise, or purchase, to take full and complete cognizance of all such titles, deeds, or other conveyances for lands lying within their respective counties, made and executed by the late lords proprietors of North-Carolina, or their agents, or by Henry E. M'Culloch, Arthur Dobbs, Murray & Co. or their agents; and if it appeareth to them that error hath been committed, either by the surveyor in platting said lands, or by the grantor in executing said titles, they shall be empowered, through their chairman, to correct said error or mistake; which

said amendment when made by the chairman, shall be considered good and valid, and attested and countersigned by the clerk of the court, and a full and complete copy thereof entered on the records, and ordered to be registered. But the requisites incumbent on the petitioner, as set forth in the law, previous to hearing of his petition, shall be strictly attended to as to all petitions originating under or by the authority of the law, except as to the number of justices necessary to hear the same.

In all determinations hereafter made on such petitions, where any person or persons may have made, or shall make him, or themselves a party or parties to prevent the prayer of the petitioner or petitioners being granted, the party failing or cast shall be adjudged to pay all legal costs and charges; which are declared to be the same as in all other civil suits originating in said county courts, where the boundaries of land do not come in question.

When any error is ordered to be rectified, and the same has been carried through from the grant into the mesne conveyances, the court making such order, shall direct that a copy thereof be recorded in the register's books of the county; for which service the register may demand two shillings.

Deeds, conveyances, or bills of sale for lands may be acknowledged by the seller, or be proved by one or more evidences upon oath, within two years after the date, in the court of the county where the land lieth, or before one of the judges of the superior courts and shall then be registered.

Or if executed in foreign parts, may be so proved within one year after arrival.

The court, on motion of the party, may issue subpœnas for the witnesses, directed to the sheriff, who shall summon them five days before court; and the witnesses shall attend on pain of forfeiting twenty pounds.

See *Gifts*, *Feme Covert*.

GUARDIAN AND WARD—See *Orphans*.

HOG-STEALING—See *Cattle*, *Horses*, *and Hogs*.

HOMICIDE.

Homicide, or the killing of any human creature, is of three kinds—justifiable, excusable, and felonious. The first has no share of guilt at all; the second very little; but the third is the highest crime against the law of nature that man is capable of committing.

JUSTIFIABLE HOMICIDE.

Justifiable homicide is of divers kinds. First, such as is owing to some unavoidable necessity, without any will, intention, or desire, and without any inadvertence or negligence in the party killing, and therefore without any shadow of blame; as for instance, by virtue of such an office as obliges one in the execution of public justice, to put a malefactor to death who has forfeited his life by the laws and verdict of his country. This is an act of necessity, and even of civil duty, and therefore not only justifiable but commendable where the law requires it. But the law must require it, otherwise it is not justifiable; therefore wantonly to kill the greatest of malefactors, a felon or traitor, attainted or outlawed, deliberately, uncompelled, and extrajudicially, is murder. And further, if judgment of death be given by a judge not authorised by lawful commission, and execution is done accordingly, the judge is guilty of murder. Also, such judgment, when legal, must be executed by the proper officer, or his appointed deputy, for no one else is required by law to do it,—which requisition it is that justifies the homicide. If another person doth it of his own head, it is held to be murder, even though it be the judge himself. It must, further, be executed pursuant to the sentence of the court. If an officer beheads one who is condemned to be hanged, or *vice versa*, it is murder; for he is merely ministerial, and therefore only justifiable when he acts under the authority and compulsion of the law. But if a sheriff changes one kind of death for another, he then acts by his own authority, which extends not to the commission of homicide; and besides, this license might occasion a very gross abuse of his power. The governor may indeed remit part of the sentence, but this is no change, no introduction of a new punishment. In some cases, homicide is justifiable rather by the permission than by the absolute command of the law; either for the advancement of public justice, which without such indemnification would never be carried on with proper vigour; or in such instances, where it is committed for the prevention of some atrocious crime, which cannot otherwise be avoided.

Secondly, homicides committed for the advancement of public justice, are, 1st, where an officer in the execution of his office, either in a civil or criminal case, kills a person that assaults and resists him; 2dly, if an officer or any private person attempts to take a man charged with felony, and is resisted, and in the endeavour to take him, kills him; 3dly, in case

of a riot or rebellious assembly, the officers endeavouring to disperse the mob, are justifiable in killing them, at the common law; 4thly, where the prisoners in a jail, or going to jail, assault the jailor or officer, and he in his defence kills any of them, it is justifiable for the sake of preventing an escape. But in all these cases, there must be an apparent necessity on the officer's side, namely, that the party could not be arrested or apprehended, the riot could not be suppressed, the prisoners could not be kept in hold, unless such homicide were committed; otherwise, without such absolute necessity, it is not justifiable. 5thly. In the next place, such homicide as is committed for the prevention of any forcible and atrocious crime, is justifiable. If any person attempts a robbery or murder of another, or attempts to break open a house in the night time, (which extends also to an attempt to burn it) and shall be killed in such attempt, the slayer shall be acquitted and discharged. This reaches not to any crime unaccompanied with force, as picking of pockets, or to the breaking open of any house in the day time, unless it carries with it an attempt of robbing also; for the law will not suffer with impunity any crime to be prevented by death, unless the same, if committed would also be punished by death.

In these instances of justifiable homicide, you will observe that the slayer is in no kind of fault whatsoever, not even in the minutest degree; and is therefore to be wholly acquitted and discharged with commendation rather than blame. But that is not quite the case in excusable homicide; the very name of which imports some fault, some error, or omission, so trivial however, that the law excuses it from the guilt of felony, though in strictness it judges it deserving of some little degree of punishment.

EXCUSABLE HOMICIDE.

Excusable homicide is of two sorts, either *per infortunium*, by misadventure, or *se defendendo*, upon a principle of self-preservation. First, homicide *per infortunium*, or misadventure, is where a man doing a lawful act, without any intention of hurt, unfortunately kills another;—as where a man is at work with a hatchet and the head thereof flies off and kills a stander-by; or where a person qualified to keep a gun, is shooting at a mark, and undesignedly kills a man; for the act is lawful, and the effect is merely accidental. So where a parent is moderately correcting his child, a master his servant or scholar, or an officer punishing a criminal, and happens to occasion his death, it is only misadventure; for the act of correction was

lawful. But if he exceeds the bounds of moderation, either in the manner, the instrument, or the quantity of punishment, and death ensues, it is manslaughter at least; and in some case (according to the circumstances) murder. For the act of immoderate correction is unlawful.

Boxing and sword-playing are unlawful acts; and if either of the parties be killed therein, such killing is felony of manslaughter. Likewise to whip another's horse, whereby he runs over a child and kills him, is held to be accidental in the rider, for he has done nothing unlawful; but manslaughter in the person who whipped him, for the act was a trespass, and at best a piece of idleness of inevitably dangerous consequence. And in general, if death ensues in consequence of any idle, dangerous, or unlawful sport, as shooting, or casting stones in a town, or the barbarous diversion of cock-throwing; in these and similar cases, the slayer is guilty of manslaughter, and not misadventure only; for these are unlawful acts.

Secondly, homicide in self-defence, or *se defendendo*, upon a sudden affray, is also excusable rather than justifiable. This species of self-defence must be distinguished from that just now mentioned as that calculated to hinder the perpetration of a capital crime which is not only a matter of excuse, but of justification. But the self-defence which we are now speaking of, is that whereby a man may protect himself from an assault, or the like, by killing him who assaults him. And this is what the law expresses by the word *chance medley*, or (as some rather choose to write it) *chaud medley*; the former of which in its etymology, signifies a casual affray; the latter an affray in the heat of blood or passion;—both of them of pretty much the same import, but the former is in common speech too often erroneously applied to any manner of homicide by misadventure. Whereas it appears by the statute 24 Henry 8, c. 5, and our ancient books, that it is properly applied to such killing as happens in self-defence upon a sudden rencounter. This right of natural defence does not imply a right of attacking; for instead of attacking one another for injuries past or impending, men need only have recourse to the proper tribunals of justice. They cannot therefore legally exercise this right of preventive defence, but in sudden and violent cases; when certain and immediate suffering would be the consequence of waiting for the law. Wherefore to excuse homicide by the plea of self-defence, it must appear that the slayer had no other possible means of escaping from his assailant.

In some cases this species of homicide (upon *chance medley* in self-defence) differs but little from manslaughter, which also happens frequently upon *chance medley*, in the proper legal sense of the word. But the true criterion between them seems to be this, when both parties are actually combating at the time when the mortal stroke is given, the slayer is then guilty of manslaughter: but if the slayer hath not begun to fight, or having begun endeavours to decline any farther struggle, and afterwards being closely pressed by his antagonist, kills him to avoid his own destruction, this is homicide excusable by self-defence. For which reason the law requires that the person who kills another in his own defence, should have retreated as far as he conveniently or safely can to avoid the violence of the assault, before he turns upon his assailant; and that not fictitiously, or in order to watch his opportunity, but from a real tenderness of shedding his brother's blood. The party assaulted must therefore fly as far as he conveniently can, either by reason of some wall, ditch, or other impediment; or as far as the fierceness of the assault will permit him; for it may be so fierce as not to allow him to yield a step without manifest danger of his life, or enormous bodily harm; and then in his defence he may kill his assailant instantly. And this is the doctrine of universal justice as well as of the municipal law.

And as the manner of the defence, so is also the time to be considered. For if the person assaulted does not fall upon the aggressor till the affray is over, or when he is running away, this is revenge and not defence. Neither under the colour of self-defence will the law permit a man to screen himself from the guilt of deliberate murder. For if two persons, A and B, agree to fight a duel,—and A gives the first onset, and B retreats as far as he safely can and then kills A, this is murder; because of the previous malice and concerted design. But if A upon a sudden quarrel assaults B first, and upon B's returning the assault, A really and *bona fide* flies, and being driven to the wall, turns again upon B and kills him, this may be *se defendendo* according to some of our writers, though others have thought this opinion too favourable, inasmuch as the necessity to which he is at last reduced, originally arose from his own fault. Under this excuse of self-defence, the principal civil and natural relations are comprehended. Therefore master and servant, parent and child, husband and wife, killing an assailant in the necessary defence of each other respectively, are excused;—the act of the relation assisting, being construed the same as the act of the party

himself. There is one species of homicide, *se defendendo*, where the party slain is equally innocent, as he who occasions his death. And yet this homicide is also excusable from the great universal principle of self-preservation, which prompts every man to save his own life in preference to that of another, when one of them must inevitably perish. As where two persons being shipwrecked, and getting on the same plank, but finding it not sufficient to save both, one of them thrusts the other from it, whereby he is drowned. He who thus preserves his own life at the expense of another man's is excusable through unavoidable necessity, and the principle of self-defence; since their both remaining on the same weak plank, is a mutual though innocent attempt upon and an endangering of each other's life.

In cases where the death has notoriously happened by misadventure, or in self-defence, the judges will usually permit (if not direct) a general verdict of acquittal.

MANSLAUGHTER.

Felonious homicide is an act of a very different nature from the former, being the killing of a human creature of any age or sex, without justification or excuse. But in this there are also degrees of guilt which divide the offence into manslaughter and murder. Manslaughter arises from the sudden heat of the passions; murder from the wickedness of the heart.

Manslaughter is the unlawful killing of another without malice, either express or implied; which may be either voluntarily, upon a sudden heat; or involuntarily, but in the commission of some unlawful act. And hence it follows, that in manslaughter there can be no accessories before the fact, because it must be done without premeditation.

As to the first, or voluntary branch. If upon a sudden quarrel two persons fight, and one of them kills the other, this is manslaughter. And so it is if they upon such an occasion go out and fight in a field; for this is one continued act of passion; and the law pays that regard to human frailty as not to put a hasty and deliberate act upon the same footing with regard to guilt. So also if a man be greatly provoked, as by pulling his nose, or other great indignity, and immediately kills the aggressor. Though this is not excusable *se defendendo*, since there is no absolute necessity for doing it to preserve himself, yet neither is it murder, for there is no previous malice; but it is manslaughter.

But in this and every other case of homicide upon provocation, if there must be a sufficient cooling time for passion to sub-

side, and reason to interpose, and the person so provoked afterwards kills the other, this is deliberate revenge and not heat of blood, and accordingly amounts to murder. So if a man takes another in the act of adultery with his wife, and kills him directly upon the spot, it is not absolutely ranked in the class of justifiable homicide, as in case of a forcible rape, but it is manslaughter. It is however the lowest degree of manslaughter, and therefore in such a case the court directed the burning in the hand to be gently inflicted, because there could not be a greater provocation. Manslaughter therefore on a sudden provocation, differs from excusable homicide *se defendendo*, in this, that in one case there is an apparent necessity for self-preservation to kill the aggressor; in the other, no necessity at all, being only a sudden act of revenge.

The second branch, or involuntary manslaughter, differs also from homicide excusable by misadventure, in this, that misadventure always happens in consequence of a lawful act, but this species of manslaughter in consequence of an unlawful one. As if two persons play at sword and buckler, and one of them kills the other; this is manslaughter, because the original act was unlawful; but it is not murder, for the one had no intent to do the other any personal mischief. So where a person does an act lawful in itself, but in an unlawful manner, and without due caution and circumspection; as when a workman flings down a stone or piece of timber into the streets, and kills a man. This may be either misadventure, manslaughter, or murder, according to the circumstances under which the original act was done. If it were in a country village where few persons pass, and he call out to all people to take care, it is misadventure only. But if it were in any populous town where people were continually passing, it is manslaughter, though he gives loud warning; and murder, if he knows of their passing and gives no warning at all; for then it is malice against all mankind. And in general when an involuntary killing happens in consequence of an unlawful act, it will be either murder or manslaughter according to the nature of the act which occasioned it. If it be in prosecution of a felonious intent, it will be murder; but if no more was intended than a mere trespass, it will only amount to manslaughter.

The crime of manslaughter amounts to felony, but within the benefit of clergy; and the offender shall be burnt in the hand, and forfeit all his goods and chattels.

But there is one species of manslaughter which is punished as murder, the benefit of clergy being taken away from it by

statute, namely, the offence of mortally stabbing another, though done upon sudden provocation. For by statute 1 Jac. 1, c. 8, when one thrusts or stabs another, not then having a weapon drawn, or who hath not then stricken the party stabbing, so that he dies thereof within six months after, the offender shall not have the benefit of clergy, though he did it not of malice aforethought. But the benignity of the law hath construed the statute so favourably in behalf of the citizen, and so strictly when against him, that the offence of stabbing stands almost upon the same footing as it did at the common law. Thus (not to repeat the cases beforementioned, of stabbing an adulteress, &c. which are barely manslaughter as at common law) in the construction of this statute, it hath been doubted, whether, if the deceased had struck at all before the mortal blow was given, this takes it out of the statute, though in the preceding quarrel the stabber had given the first blow. And it seems to be the better opinion that this is not within the statute.

Also it hath been resolved, that the killing a man by throwing a hammer or other weapon, is not within the statute; and whether a shot with a pistol be so or not, is doubted. But if the party slain had a cudgel in his hand, or had thrown a pot or bottle, or discharged a pistol, at the party stabbing, this is a sufficient having a weapon drawn on his side, within the words of the statute.

MURDER.

Murder is where a homicide is committed under such circumstances as makes the killing to be neither justifiable, nor excusable, nor manslaughter. Being neither of these, it is necessarily murder; and this is enough to say here. But for further satisfaction, I will give the definition of murder; which is, when a person of sound memory and discretion, unlawfully kills any reasonable creature in being, and under the public protection, with malice aforethought, either express or implied.

Malice aforethought, signifies wickedness of the heart more than is ordinarily found amongst mankind, or the sign of a diabolical temper and disposition, or the doing the fact under circumstances which do not admit of any justification, excuse, or alleviation.

When you wish to know in what class to place a homicide, compare the circumstances thereof with those in justifiable homicide, excusable homicide, and manslaughter; and if it agree with none of these, it is murder.

Murder is a capital felony, or a felony without benefit of clergy.—*Haywo.*

HORSES—See *Cattle, Horses, and Hogs.*

HORSE-STEALING.

If any person or persons within the limits of this state, shall feloniously steal any horse, mare, or gelding, upon due conviction thereof, such felon or felons shall suffer death without benefit of clergy.

See *Larceny.*

HUE AND CRY.

Hue and Cry is the old common law process of pursuing with horn and with voice after felons, and such as have dangerously wounded another.

It may be raised two ways, either by precept or warrant from a justice of the peace; or without such precept by a peace officer, or by any private man that knows of a felony.

The party raising it, must acquaint the constable of the place with all the circumstances which he knows of the felony and the person of the felon; and thereupon the constable is to search his own district or town, and raise the neighbourhood, and make pursuit with horse and foot. And in the prosecution of such hue and cry, the constable and his attendants, have the same powers, protection, and indemnification, as if acting under the warrant of a justice of the peace.

But if a man wantonly or maliciously raises a hue and cry without cause, he shall be severely punished as a disturber of the public peace.

If the offender be not found in the constablewick, then the constable shall give notice to the next constable, and he to the next, until the offender be found.

Those who will not pursue upon hue and cry, may be indicted, fined, and imprisoned.

The constable may search suspected places or houses, but he must enter by the doors open; for he cannot break them barely to search, unless the person against whom the hue and cry is levied be there, and then he may. Therefore, in case of such a search, the breaking of the door is at his peril; justifiable if the guilty person be there, otherwise not. But

he must give notice of his business, and demand entrance, and first have a refusal, before the doors can be broken.

The constitution of this state declares "that general warrants whereby any officer or messenger may be commanded to search suspected places, without evidence of the fact committed, or to seize any person or persons not named, whose offence is not particularly described and supported by evidence, are dangerous to liberty, and ought not to be granted."

Form of a Warrant for Hue and Cry.

State of North-Carolina, Wake County.

To all Sheriffs and Constables of the aforesaid County, to whom these Presents shall come.

Whereas A B of the county aforesaid, hath this day made oath before me, C D, esq. one of the justices of the peace for the said county, that he was last night robbed of [Here describe the goods stolen], at , in the county of Wake and state aforesaid, by one E F, late of the same county, planter, who is since fled for the same, and not yet apprehended. Therefore in the name of the state, I charge and command you, and every of you, in your several precincts and districts, to search diligently for the said E F, and to make hue and cry after him, from neighbourhood to neighbourhood, as well by horsemen as by footmen. And if you shall find him, that then you apprehend and bring him before a justice of the peace of said county, to be dealt with as the law directs.

Given under my hand and seal the day of

C. D.....(seal.)

See *Arrest, Bail.*

HUNTING.

If any person summoned as an evidence against a fire-hunter, shall refuse or neglect to give evidence, he shall be commited to the county jail until he shall.

Any person or persons discovered hunting in the woods, with a gun, in the night time, by fire light, shall, upon conviction, by indictment or presentment in any court of record, be find twenty pounds; to be applied to the use of the county where the offence was committed; and on failure or refusal to pay the fine, shall receive thirty-nine lashes on his bare back, well laid on, in open view, by the sheriff; and stand committed until costs be paid.

If any slave or slaves be discovered hunting as before mentioned, the owner, or person in whose service he or they may be, shall, upon due conviction of such slave or slaves before any justice of the peace of the county wherein such offence

may be committed, forfeit five pounds; to be levied by a warrant immediately to be issued by such justice for that purpose. And if any person shall be duly convicted as aforesaid, of sending his slave to hunt with a gun, in the night by fire light, he shall be subject to the same pains as are inflicted on fire-hunters.

Any person convicted by indictment or presentment in any court of record, of killing any deer and leaving the carcasses in the woods, shall for every offence pay twenty shillings.

It shall not be lawful for any person on the east side of the Apalachian mountains to kill or destroy any deer running wild in the woods or unfenced grounds in this state, by gun or otherwise, between the twentieth day of February and the fifteenth day of August then next succeeding, in each year, unless on his own lands; and if any person on the east side of the said mountains, shall kill or otherwise destroy any deer within the time before described, and contrary to the meaning and intent of the act of assembly, every such person shall forfeit and pay for each and every deer so unlawfully killed or destroyed, the sum of forty shillings; to be recovered before any justice of the peace, and applied as by law directed. And in case any servant or slave shall on the east side of the said mountains kill or destroy any deer between the twentieth day of February and the fifteenth day of August in any year, the owner of such slave shall be liable to pay the sum of forty shillings for each deer so unlawfully killed or destroyed; to be recovered and applied as by law directed.

It shall not be lawful for any person on the east side of the Apalachian mountains, to hunt with a gun or with dogs on the lands of any other person, without leave obtained from the owner of the said land, under the penalty of forfeiting five pounds for every offence, to be recovered by the owner before any justice of the peace of the county where such offence is committed or the offender resides, and applied one-half to his own use, the other half to the use of the county. But no such recovery shall be had for the offence above mentioned, unless the owner of the land shall, by advertisement posted up in two or more public places, have forbid the persons so hunting by name, or all persons generally, to hunt on his land previous to the offence. And recovery shall not be had in any case whatever, unless the prosecution is commenced within one month after the offence is committed.

All the aforesaid fines and penalties shall be one-half to the use of the informer, the other half to the use of the poor of

the county wherein the offence shall be committed, except such as are otherwise directed.

Upon any conviction for the offence of fire-hunting, and the person failing to pay the fine prescribed by law, the court in which the conviction is made, is authorised to sentence the offender to such term of imprisonment as may be judged adequate to the punishment of the offence, not exceeding two months.

IDIOTS AND LUNATICS.

An idiot, or natural fool, is one that hath had no understanding from his nativity; and therefore is by law presumed never likely to attain any.

A lunatic, or *non compos mentis*, is one who hath had understanding, but by disease, grief, or other accident, hath lost the use of his reason. A lunatic is indeed properly one that has lucid intervals; sometimes enjoying his senses, and sometimes not, and that frequently depending upon the change of the moon. But under the general name of *non compos mentis* are comprised not only lunatics, but persons under frenzies, or who lose their intellects by disease; those that grow deaf, dumb, and blind, not being born so; or such, in short, as are judged by the court of chancery incapable of conducting their own affairs.

But a person ought not to be found a lunatic or *non compos*, for being of a disturbed mind, or of a weak one, if he has reason enough to manage his affairs.

In criminal cases, idiots and lunatics are not chargeable for their own acts, when under these incapacities;—no, not even for treason itself. Also, if a man in his sound memory commits a capital offence, and before arraignment for it, he becomes mad, he ought not to be arraigned for it, because he is not able to plead to it with that advice and caution that he ought. And if after he has pleaded, the prisoner becomes mad, he shall not be tried; for how can he make his defence? If after he be tried and found guilty, he loses his senses before judgment, judgment shall not be pronounced. And if after judgment he becomes of *non sane* memory, execution shall be stayed; for peradventure, says the humanity of the law, had the prisoner been of sound memory, he might have alleged something in stay of judgment or execution. But if there be any doubt whether the party be *non compos* or not, this shall be tried by a jury; and if he be so found, a total idiocy,

or absolute insanity, excuses from guilt, and of course from the punishment of any criminal action committed under such deprivation of senses. But if a lunatic hath lucid intervals of understanding, he shall answer for what he does in those intervals, as if he had no deficiency. Yet in the case of absolute madmen, as they are not answerable for their actions, they should not be permitted the liberty of acting unless under proper control: and, in particular, they ought not to be suffered to go loose, to the terror of the citizens. It was the doctrine of our ancient law, that persons deprived of their reason might be confined till they recovered their senses, without waiting for the forms of a commission or other special authority.—*Blac Com.*

But by the laws of this state—the court of pleas and quarter sessions within whose jurisdiction any idiot or lunatic may be, may appoint a guardian for him or her, taking bond for the faithful administration of the trust reposed in him, in the same manner as bonds are taken from the guardians of orphans. Such guardian to continue during the pleasure of the court, and to have the same powers to all purposes, and subject to the same rules, orders, and restrictions as guardians of orphans. But such idiocy and lunacy must first be ascertained by inquisition of a jury, by a writ to be issued by the court to the sheriff for that purpose.

Whenever it shall be made appear to any of the courts of pleas and quarter sessions within this state (seven justices at least being present), either by the wardens of the county, or guardians of such lunatic or idiot, that the personal estate of any lunatic or idiot in such county has been exhausted, or is insufficient for his or her support, and that such idiot or lunatic is likely to become chargeable on the parish, then and in either of such cases, the said courts are hereby empowered to make an order for the sale or renting of the real estate of such ideot or lunatic, or any part thereof, in such manner and upon such terms as they may deem adviseable. And all sales made in pursuance thereof shall be valid.

JEOFAILS.

Statutes of amendment and jeofails are so called, because when a pleader observes any slip in the form of his proceedings, and acknowledges such error—(*jeo faile*, or I fail) he is at liberty by these statutes to amend it; which amendment is seldom actually made, but the benefit of the acts is attained

by the court overlooking the exception. These statutes are, 14 *Edw.* 3, c. 6. 9 *Hen.* 5, c. 4. 4 *Hen.* 6, c. 3. 8 *Hen.* 6, c. 12 & 15. 32 *Hen.* 8, c. 30. 18 *Eliz.* c. 14. 21 *Jac.* 1, c. 13. 16 & 17 *Ch.* 2, c. 8. 4 & 5 *Ann.* c. 16. 9 *Ann.* c. 20. 5 *Geo.* 1, c. 13.

By acts of 1768, c. 1, § 45, all the statutes of jeofails and amendments then in force in England, were enforced here.

And by acts of 1777, c. 2, § 35, it is enacted that all the statutes of England and Great Britain for the amendment of the law, commonly called statutes of jeofails, and which were heretofore enforced in this territory by any act or acts of the general assembly under the late government, are hereby declared to have continued, and to be now in full force in this state, and shall be duly observed by all judges and justices of the several courts of record within the same, according to the true intent and meaning of the said statutes, unless where the same are or may be altered by this or any other act.

But none of these statutes extend to indictments or proceedings in criminal cases.

See *Indictments, Debt and Debtor.*

INDICTMENTS.

An indictment is a written accusation of one or more persons, of a crime or misdemeanor, preferred to, and presented on oath by a grand jury.

The grand jury are previously instructed in the articles of their inquiry by a charge from the judge who presides on the bench. In the county court it is sometimes given by the direction of the court by the county solicitor, or other person the court may request.

They then withdraw to sit and receive indictments, which are preferred to them in the name of the state, but at the suit of any private prosecutor. They are only to hear evidence on the side of the prosecution, for the finding the indictment is only in the nature of an inquiry or accusation, and the grand jury are only to enquire upon their oaths whether there be sufficient cause to call upon the party to answer it. A grand jury however ought to be thoroughly persuaded of the truth of an indictment so far as their evidence goes, and not to rest satisfied merely with remote probabilities;—a doctrine that might be applied to very oppressive purposes.

All offences must be inquired into, as well as tried, in the county where the fact is committed, and not out of it.

When the grand jury have heard the evidence, if they think it a groundless accusation, they, by their foreman, endorse upon it, 'not a true bill;' and then the party is discharged without further answer. If they are satisfied of the truth of the accusation, they in the same manner endorse upon it, 'a true bill.' The indictment is then said to be found, and the party stands indicted. To find a bill, there must at least twelve of the jury agree; but if twelve assent, it is a good presentment, though some of the rest disagree. And when the indictment is so found, it is publicly delivered into court.

Indictments must have a precise and sufficient certainty, and must set forth the Christian name and surname, and the state and degree, and the county of the offender, also the time and place; though a mistake in the time or place is not material, if the time be before finding the indictment, and the place within the jurisdiction of the court. The offence must be also set forth with clearness and certainty. In indictments for petit larceny, the value of the thing stolen must be expressed, in order that it may appear whether it be grand or petit larceny.

All kinds of crimes of a public nature, all disturbances of the peace, all oppressions and other misdemeanors whatsoever, of a notoriously evil example, are indictable.

And of all such offences a justice may hear complaints, and upon sufficient cause may issue his warrant and have the offender brought before him, to be committed, or bailed, or discharged, as the circumstances may require.—See *Arrest*, *Bail*.

But a mere civil trespass, redressible by an action of trespass, and where no actual violence is done by breaking doors, getting possession, and turning the possessors out by coming armed with pistols, swords, or the like, is not indictable, nor should be ever allowed to be; for then the prosecutor becomes a witness and is exempt from costs unless in extraordinary cases; but if committed with such or the like violences, then it is indictable.

If a statute or act of assembly prescribe a particular method of punishing an offence which was punishable before, the party may be punished either way. But if it direct a punishment for the future by a particular method, for the doing an act not punishable before, such method must be specifically pursued, and not the common law method of indictment.

If a statute or act of assembly prohibit an act to be done, and say nothing more, the doing of that act is indictable.

A fact amounting to felony, cannot be indicted as a trespass; nor can a person indicted for a felony, be found guilty and punished as for a trespass.

Every indictment must conclude with, 'against the peace and dignity of the state.'

No freeman can be put to answer any criminal charge but by indictment, presentment, or impeachment.

Nor can a freeman be convicted of any crime, but by the unanimous verdict of a jury.

If an indictment in the county court contain the charge against the criminal, expressed in a plain, simple, intelligible, and explicit manner, so that there appears sufficient upon the face to induce the court to proceed to judgment, it shall not be quashed, nor judgment arrested.

If the defendant be acquitted, or a *noli prosequi* entered, and the court thinks the prosecution was promoted on frivolous or malicious pretences or grounds, they may order the prosecutor to pay costs.

In all criminal prosecutions, by indictment or presentment, in any of the superior courts of law, it is sufficient that the bill contain the charge against the criminal, expressed in a plain, intelligible, and explicit manner; and no bill of indictment or presentment shall be quashed, or judgment arrested, for or by reason of any informalities or refinements, when there appears to the court sufficient in the face of the indictment to induce them to proceed to judgment.

See *Jurors*.

INFANTS.

By an infant, or minor, is meant any one who is under the age of twenty-one years.

The law does in some cases privilege such a one as to common misdemeanors, so as to escape fine, imprisonment, and the like, and particularly in cases of omission; for not having the command of his fortune, he wants the capacity to do those things which the law requires. But where there is any notorious breach of the peace, as riot, battery, or the like, (which infants when full grown are at least as liable as others to commit) for these, an infant above the age of fourteen, is equally liable to suffer as a person of the full age of twenty-one.

Under seven years, an infant cannot be guilty of felony; but at eight years old, he may, if capable of guile. Under fourteen, he shall be deemed incapable of guile, until it appear that he was capable, and could discern between good and evil; and then he may be convicted and suffer death—as if after killing his companion, he hide himself or the body—or as if in the case of burning a house, it appears he had malice, revenge, and cunning. But in all such cases, the evidence of malice, which is to supply age, or of a capacity to discern between good and evil, should be strong and clear beyond all doubt or contradiction.

With regard to civil cases—an infant cannot be sued without joining the name of his guardian; but he may sue by his guardian, or next friend who is not his guardian, and may be any person who will undertake his cause, and is sometimes made use of in suits against a guardian. Generally speaking, he cannot alien his lands nor do any legal act, nor make a deed or writing under seal, nor indeed any manner of contract that will bind him; but this is subject to some exceptions, for he may purchase lands, but the purchase is incomplete,—for when he comes of age he may either agree or disagree thereto as he thinks prudent or proper, without alleging any reason; and so may his heirs after him if he dies without having completed his agreement. And he may by deed or will appoint a guardian to his children, if he has any. Also he may bind himself to pay for his necessary meat, drink, apparel, physic, and such other necessaries; and likewise for his good teaching and instruction, whereby he may profit himself afterwards. But if he bind himself in a bond with a penalty, for the payment of any of these necessaries, that bond shall not bind him. If he borrows money to pay for the necessaries, and applies it accordingly, he is not liable at law, because he might have wasted it. If he is an executor, he may give an acquittance on payment,—not without payment. No laches, or lack of diligence, or negligence, can be imputed to him during his infancy.

A male at fourteen, and a female at twelve, may contract marriage. At seventen an infant may be an executor. And at eighteen he may dispose of his chattels by will.

INSOLVENT DEBTORS.

If any person or persons now are, or hereafter shall be taken or charged on mesne process or execution for any debt,

and shall have remained in close prison within the walls thereof, by the space of twenty days, it shall and may be lawful for two justices of the peace, or any one of the judges of the superior courts of this state, either in or out of court, upon the petition or petitions of such prisoner, under his or their hands and seals, whereof notice shall be given to the person or persons, his or their executors, administrators, attornies, or agents, at whose suit such prisoner or prisoners shall be imprisoned, to require the sheriff, jailor, or keeper of any prison, within their respective jurisdictions, to bring before such justices of the peace, or judge of the superior court, issuing such warrant, either in or out of court, the body of any person being in prison as aforesaid, together with a list of the several writs, mesne processes, and executions, with which he, she, or they is or are charged in the several jails as aforesaid; which warrant every such sheriff, jailor, or keeper is commanded to obey. And such prisoner or prisoners coming before the said justices or judge (the creditor or creditors, if resident in this state, at whose suit he is confined, being first personally summoned according to the directions by law) if he, she, or they have no visible estate, real or personal, and shall make oath before the said justices of the peace, or judge of the superior court respectively, issuing such warrant, that he hath not the worth of forty shillings, sterling money, in any worldly substance, either in debts owing to him, or otherwise howsoever, over and besides his wearing apparel, working tools, and arms for muster, one bed and its necessary furniture, one wheel and cards, and one loom; and that he has not at any time since his imprisonment, or before, directly or indirectly sold, assigned, or otherwise disposed of, or made over in trust, for himself or otherwise, any part of his real or personal estate, whereby to have or expect any benefit or profit to himself, or to defraud any of his creditors to whom he is indebted; and if there be no person present that can prove the contrary, then such person, by such court or justices, without form of trial, shall be immediately set at liberty, and shall stand forever discharged of all such debts so sued for, and all costs of suit; but execution may issue against any estate afterwards acquired by such insolvent debtor or debtors taking the benefit of this act. But in case such person shall afterwards be discovered to have sworn falsely, he shall be indicted for perjury; and if convicted, shall lose both his ears in the pillory, and be liable to satisfy the debt and damages, and be rendered incapable of taking the benefit of the law.

The said justices of the peace, and judge of the superior court, respectively, before whom such prisoner or prisoners shall, upon oath, have discharged themselves, when the proceedings are before them out of court, shall put the same in writing, under their hands, and return the same into the court from whence the mesne process or execution issued, there to be kept on record, under the penalty of five pounds, for each judge or justice, for such omission and neglect, to be paid to the person injured by order of the said court.

If any person or persons shall be taken or charged in mesne process or execution, for any sum, and shall have remained within the walls of a prison by the space of twenty days, and shall have any estate, real or personal, and be minded to deliver up his, her, or their effects, to his or their creditors, it shall be lawful for such prisoner to prefer a petition to the court from which such process issued, setting forth the cause of imprisonment, and an exact account of his or their estate, and all circumstances relating thereto; which petition subscribed by him, her, or them, and schedule, shall be lodged with the clerk of the court from which such process issued, twenty days at least before the next succeeding court; and upon such petition so filed, the clerk of the said court shall issue, under his hand and seal, a copy of the said schedule, and a notice to the creditor or creditors, at whose suit such prisoner or prisoners are confined, setting forth the substance of the said petition, and summoning them to attend the next succeeding court, to show cause, if any they have, why the prayer of the said petition should not be granted; which notice being duly served upon the person or persons, his, her, or their executors, administrators, attorney, or agent, at whose suit such prisoner or prisoners shall be imprisoned, ten days at least before the sitting of the said court, the court shall order the said prisoner or prisoners to be brought before them; and if the said creditor or creditors at whose suit he is imprisoned, shall appear, or being duly summoned, shall fail to appear, the court shall proceed to examine the nature of the said petition in a summary way, and shall tender to such person an oath, to the following effect:

I, A B, in the presence of Almighty God, solemnly swear, profess, and declare, that the schedule now delivered and by me subscribed, doth contain, to the best of my knowledge and remembrance, a full, just, true, and perfect account and discovery, of all the estate, goods, and effects, unto me any ways belonging, and such debts as are to me owing, or to any person in trust for me; and of all securities and contracts, whereby any money may hereafter become payable, or any benefit or advantage accrue to me or to my use, or to any person in trust for me: and that I,

or any other person or persons in trust for me, have not land, money, or stock, or any other estate, real or personal, in reversion or remainder, of the value of the debt or debts with which I am charged in execution: and that I have not directly or indirectly sold, lessened, or disposed of in trust, or concealed all or any part of my lands, money, goods, stocks, debts, securities, contracts, or estate, whereby to secure the same, to receive or expect any profit or advantage thereof, or to defraud or deceive any creditor or creditors to whom I am indebted, in any wise howsoever. So help me, God.

If such prisoner take such oath, and the court be convinced of the truth thereof, the schedule so subscribed being filed with the clerk of the court for the better information of the creditors of such prisoner or prisoners, then and in that case it shall and may be lawful for the court before whom such oath was taken, by warrant, to command the sheriff, jailor, or keeper of any prison, forthwith to set at liberty such prisoner; which warrant shall be a sufficient discharge to such sheriff, jailor, or keeper, and shall indemnify him or them against any escape or escapes, or action or actions whatsoever, which shall or may be brought, commenced, or prosecuted, against him or them, by reason thereof;—and if any such action shall be commenced against any sheriff or other officer, for performing his duty in pursuance of the act in that case made and provided, such sheriff may plead the general issue, and give the act in evidence.

All the lands, tenements, and hereditaments which shall be contained in such schedule for such use, interest, right, or title, as such prisoner or prisoners then shall have in the same, which he or she may lawfully depart withal; and also all goods and chattels whatsoever in such schedule also contained, shall be vested in the sheriff of the county wherein such lands, tenements, hereditaments, goods, and chattels shall lie or be found; and such sheriff is hereby authorised, empowered, and required to sell at public vendue, and convey the same to any person or persons whatsoever, for the best price that can be got for the same, and the monies arising by such sale shall be by such sheriff or officer, upon oath, paid into the hands of the clerk of the superior court of the county where such prisoner shall be confined, for the uses and purposes hereafter mentioned; saving to every such prisoner his or her necessary apparel and utensils of trade, one bed and its necessary furniture, one wheel and cards, and one loom.

The judge of the superior court shall appoint two commissioners, who shall have full power to examine into the claims of all and singular the creditors of the person or persons im-

prisoned, as well those at whose suit he was committed, as of all others; and the said commissioners shall by advertisement, at the courthouse of the county or in some public newspaper or gazette, make known the time at which they propose to examine such claims (which shall be within sixty days after their being appointed) and upon such creditors, their executors or administrators, agents or attornies appearing before them, and satisfying them of the justice of their claims, they shall proceed to make distribution amongst each and every of the creditors so appearing, in proportion to their respective demands; and the clerk of the said court is hereby directed to pay such monies so received upon the sale of such insolvent's estate, into the hands of the said commissioners, for the purposes aforesaid.

The person of such debtor so discharged, shall never be arrested for the same debt; but execution may issue against any estate which the said insolvent debtor or debtors may afterwards acquire.

As it sometimes happens that poor insolvent debtors are a long time confined in jail, for want of knowing to whom to give notice of their intention to take the benefit of the act for relief of such insolvents, where the party at whose suit such debtor is in execution does not reside in this state, nor has any known agent or attorney here to whom he can give such notice, which by the laws in force in such cases is required to be given; which long confinements also happen in cases where debtors have remained in prison twenty days, and the sheriffs or jailors have not known to whom to give notice thereof, or of whom to demand security for their prison fees after the expiration of the twenty days. For the relief therefore of such insolvent debtors, it is further provided, that when the party at whose suit or instance any such debtor shall be confined in execution, does not reside in this state, nor hath any known agent or attorney here, it shall and may be lawful and sufficient for such insolvent debtor, to give notice of such his intention to take the benefit of the said act for the relief of insolvents, to the attorney at law who prosecuted the suit against him; and also where the debtor shall have remained in execution for the space of twenty days, it shall be lawful and sufficient for the sheriff or jailor, in the like cases, to give notice thereof to the attorney who prosecuted the suit, and to demand security of him for the prison fees that shall arise after the expiration of the twenty days; and if he shall fail or refuse to give such security, then to discharge such debtor out of custody.

If at any time hereafter any person being taken or charged on mesne process or execution, shall not be able to satisfy or pay his or her prison fees, such person shall, after the expiration of twenty days, be discharged by the creditor, and the sheriff or jailor may demand or recover of the party or parties at whose suit such insolvent person shall be imprisoned, all such fees as shall become due on account of such imprisonment.

If any person who shall take such oath, shall, upon indictment of perjury, be convicted thereon, he shall suffer all the pains of wilful perjury, and shall be liable to be taken on a new process, and shall never after have the benefit of the law.

Where an oath is required, the solemn affirmation of a quaker shall be taken in lieu thereof; and every person convicted of wilful and false affirming, shall suffer the like penalties as for wilful and corrupt perjury.

By acts of 1810, c. 20, the laws now in force in this state granting any privilege to insolvent debtors, are hereby extended to all free persons of colour, under the same rules, regulations, and restrictions, to all intents and purposes, as the acts now are to insolvent debtors.

INSPECTION.

TOBACCO.

Annually at the first court to be held after the first day of June, in any county where tobacco inspections and warehouses were established on the fifteenth November 1777, the county court shall appoint two discreet men to be inspectors thereof. And where the inspectors at any warehouse, disagree in their opinion of the quality of any hogshead of tobacco, or when the tobacco to be inspected is the property of one of the inspectors, then another sworn inspector from the nearest warehouse, or justice of the peace, shall be called and shall decide, and receive or reject the same. And where any inspector shall die, or be rendered by sickness or accident, unable to attend his duty, then any three justices of the county may appoint and swear in any proper person to act as inspector until the disability of the other be removed.

The inspectors shall give bond and security, to be approved of by the justices appointing them, in 1,000*l.* with condition that they shall respectively execute the office of inspector of tobacco, faithfully and truly, according to law. Which bonds shall be renewed as under the title *Bonds*. And they shall take an oath; for which—see *Oaths*.

The inspectors at Halifax warehouses shall constantly attend their duty at the said warehouses, from the tenth of October to the tenth of July in every year, or shall forfeit for each day either of them shall neglect the same, forty shillings, sickness or other unavoidable accident excepted: to be recovered by a warrant before any magistrate of the county where the inspector resides, by any informer, to his own use.

The justices of any county in this state, may if necessary, appoint such places for the inspection of tobacco in their county, and inspectors to attend thereat, at their discretion, so as such place of inspection be at a landing on some navigable stream: and may at the expense of their counties, purchase or rent ground, build or rent warehouses, provide scales and weights, and other matters incident to an inspection; and allow salaries to the inspectors at their discretion, payable out of the money assessed for defraying the county charges—and may limit the time of attendance thereat. And every such inspector shall be under the like bond and security and oath, and subject to the same forfeiture, method of recovery, and application, as is before mentioned for the non-attendance of inspectors at Halifax warehouses.

If an inspector's note shall be lost or destroyed, the owner thereof may, on making oath before some magistrate of the quantity of tobacco mentioned in the same, and that the note is lost or destroyed, and that he or she is the lawful owner thereof and entitled to receive the tobacco therein mentioned, obtain a certificate from the justice administering such oath, and shall thereby be entitled to receive the tobacco for which the lost note was given.

When any person demands tobacco of any inspectors on their notes, and suspects the same hath received damage after inspection, three justices of the county, not being merchants, where the tobacco is, shall on application of such person, repair immediately to the warehouse, and there being first sworn before some justice, well and carefully to view and examine the tobacco in dispute, and give their opinion thereon whether the same ought to pass or be rejected, according to the best of their judgment and conscience, without favour or affection. And if in their judgment it is good, sound, and fit for exportation, the tobacco so passed shall be a sufficient tender to the party demanding on the notes for the same; and then the party calling a review, shall pay eight shillings to each justice so attending. But if they reject the tobacco, the inspectors shall pay the same, and shall be liable to the owner of the notes for the value of the tobacco so rejected, and the

damages sustained by lying out of the same from the time of demanding.

The county court may appoint, not exceeding ten persons at any inspection, to turn up and cooper tobacco, to continue during good behaviour.

If they misbehave, the inspectors may report them to the county court, and if found guilty, the court may remove them and appoint others.

The inspectors appointed to inspect tobacco at the several inspections within this state, shall and may take and receive for inspecting each hogshead of tobacco and issuing a note, the sum of four shillings; and for each hundred weight of transfer tobacco by them inspected, the sum of six pence, and so in proportion for a smaller quantity, and no more: and the turners up of tobacco shall take and receive the sum of three shillings for each hogshead he or they shall turn up and cooper, and no more.

If any inspector take greater fees than the law allows, he forfeits five pounds for each offence, recoverable before a justice, to the use of the prosecutor.

The court may also appoint pickers, and may appoint one of them to act as inspector when an inspector is unable to attend; and he may give a casting vote where the inspectors disagree; and for misbehaviour may remove any picker and appoint another.

For the Oath of a Picker—see *Oaths*.

OTHER ARTICLES.

All public inspectors shall hold their offices during good behaviour. And where an inspector shall be guilty of a misbehaviour in his office, on complaint made to the county court, they shall issue a citation, and cause him or them to appear before the court at the ensuing term. And if the charges shall be supported by good and sufficient testimony, and confirmed by the verdict of a jury, they shall remove such inspector from his said office, and appoint another in his stead, who shall hold his office during good behaviour.

The county court may appoint places of inspection in their county at discretion, and one or more inspectors for such places, who shall take the same oaths, and be subject to the same rules, regulations, and restrictions, and be entitled to the same emoluments, as directed by former laws.

The inspector shall give bond with two good securities in 500*l.* for the true and faithful discharge of his office according to law; which must be acknowledged before the court and recorded. Such bond to be payable to the governor and his successors, and to be in force for three years after the office cease; which bond shall be renewed as under the title *Bonds.* And shall also take an oath, which see under title *Oaths.* On the death or disability of any inspector, the county court to appoint a successor, or if the death happens in vacation, three justices may appoint until the next court. Inspectors for places in a town, shall be residents thereof during their continuance in office. Any inspector neglecting his duty, or branding or stamping any commodity contrary to law, or branding any empty barrel, or lending his brand to any person, forfeits for every barrel of tar, pitch, or turpentine, twenty shillings; for every barrel or cask of beef, pork, or rice, fish or flour, ten pounds; and for branding an empty barrel, 100*l.* And every other person for branding, or procuring to be branded, any cask or barrel otherwise than by the inspector or his assistant, the same sum as an inspector does for breach of his duty. The said penalties of ten pounds, and of twenty shillings, are recoverable by action of debt before a justice of the peace.

The maker of every barrel of tar, pitch, or turpentine, shall mark or brand the same with the initial of his or her name, not less than one inch long, under the penalty of one shilling for every barrel; recoverable before a justice, with cost; one-half to the prosecutor, the other to the county.

Any cooper exposing to sale any barrel or half barrel, for beef or pork, other than of the dimensions by law directed, forfeits twenty shillings; and shall set his proper brand upon the same before they expose them to sale, which shall be recorded in the clerk's office; or forfeit ten pounds for every neglect. And every barrel of tar, pitch, and turpentine shall be branded in the same manner, under the penalty of five shillings; which penalties are recoverable, and to be applied in the same manner as those last mentioned.

Every seller or exporter of beef, pork, rice, tar, pitch, turpentine, fish, flour, butter, shall produce the certificate of the inspector who inspected the same, and make oath or affirmation, if required, before a justice, on the delivery of the goods d or exported, that the several commodities so to be sold exported, are the same that were inspected and passed, and tain the full quantity mentioned in such certificate. This h the justice shall certify on the back of the certificate, and

shall be delivered to the buyer; and the exporter shall deliver the same to the master of the ship or vessel. And the seller or exporter refusing to make such oath, forfeits 100*l*.

No person holding any post or place of profit, by deputation or otherwise, shall be appointed to the office of inspector. And the appointment of such a one shall be void, and the court shall appoint another.

No person shall inspect any sawmill lumber, staves, or shingles, without being first qualified as directed by the act of 1784, c. 26, under the penalty of twenty pounds for every such offence; to be recovered before a justice of the peace; one-half to the use of the state, the other half to the person suing for the same. Any three justices of the peace, for the county including such place of inspection, shall be at liberty to appoint one or more persons to act as inspectors until the next succeeding county court.

By act of 1807, c. 19, if any miller or manufacturer of flour shall put up flour for sale or exportation in a barrel which does not contain 196 pounds net flour, well ground, bolted, and packed, or shall not brand on each barrel the net weight, in figures, and also the first letters of his Christian name, and his surname, at full length; or shall put up flour as aforesaid, in a barrel not made of good seasoned oak or ash wood, twenty-six inches in width, every such persons so offending shall forfeit five pounds to any person who shall sue for the same.

When any person shall sell any barrel or barrels of flour not containing the quantity by law required, the purchaser, unless there shall be a special contract to the contrary, shall be allowed to recover the value of the deficiency in an action on the case, for money had and received, before any jurisdiction having cognizance of the same.

By act of 1810, c. 8, an inspector of flour shall be appointed at each of the following places, viz. Fayetteville, Wilmington, Newbern, Edenton, Washington, Tarborough, and Plymouth. And the respective county courts shall, at the first term after the first day of January in each and every year, not less than ten acting justices being present, appoint a person of good repute, and who is a skilful judge of the quality of flour, at each of the places aforesaid. And in case of the death of any person so appointed, or his refusal or neglect to act, the justices of said counties, respectively, or any three of them, shall, as soon as conveniently may be thereafter, meet together and appoint another until the next court, when it shall be the duty of the court to make an appointment in manner aforesaid, for the remainder of the year.

All bolted wheat flour, and every cask thereof, brought to any of the places before mentioned for sale or exportation, shall be made merchantable and of due fineness, and without any mixture of coarser flour, or flour of any other grain than wheat. The casks shall be well made, of good seasoned materials, with ten hoops, sufficiently nailed with four nails in each chimb hoop, and three nails in each upper or bilge hoop. The staves shall be twenty-seven inches in length, and the head seventeen and one-half inches in diameter. And the half barrels shall be made of staves twenty-three inches in length, with each head twelve and one-half inches in diameter.

Every miller of flour for sale or exportation shall brand every barrel of flour with a brand containing the initials of his Christian name, and his surname at length, and shall mark thereon the net and tare weight, before the same shall be removed, under the penalty of forty cents for every barrel not hooped, marked, branded, and nailed as aforesaid; to be recovered from such miller, or from the person who shall bring such flour to any of the places aforesaid for sale. And in case the penalty be recovered from the person so bringing the flour for sale, such person may recover the same from the miller from whom he purchased or received the flour; provided it appears he gave notice to said miller that he intended to carry the same to one of the places aforesaid for sale or exportation, and that he requested said miller or bolter to secure and brand said barrels.

Every miller or bolter shall put into each barrel 196 pounds of flour, and into each half-barrel ninety-eight pounds. And for every deficient pound of flour he shall forfeit ten cents.

The inspector, upon suspicion or at the request of the purchaser shall unpack any cask of flour; and if there be a deficiency of weight, the miller, bolter, or seller shall pay the charges of unpacking and repacking, over and above the penalties aforesaid. But otherwise, the charges shall be paid by the inspector, or by the purchaser if the trial be made at his request.

Each and every cask of flour brought to any of the before mentioned places for sale, or to be exported, or which shall be manufactured in said places for sale or exportation, shall be submitted to the examination of the inspector, who shall inspect and try the same by boring through the cask from one head, with an instrument not exceeding half an inch in diameter, and equal in length to a barrel of flour, to be by him provided for the purpose; and if he shall judge that the same [illegible] packed and merchantable, according to the directions

of this act, he shall plug up the hole and brand the cask in the quarter with the name of the place in which he is inspector, with a public *brand-mark*, to be by him provided, and shall brand and mark the degree of fineness which he shall determine the same to be of; which degree shall be distinguished as follows; to-wit, superfine, fine, middling, shipstuff. For which trouble, the inspector shall receive from the owner of such flour, five cents for each cask. And no inspector shall pass any flour which shall prove on examination to be unmerchantable, agreeably to the true intent and meaning of this act, but shall cause the same to be marked on the bilge 'condemned,' or leave it for further examination, if required; which examination the owner shall procure to be made within twenty days; and the inspector may demand and receive from the owners thereof, the same rate and prices as if the same had been passed. And it shall not be lawful for any person to export, or lade on board of any vessel for exportation out of this state, any barrel of flour marked 'condemned' by an inspector; or to export or lade on board of any vessel for exportation out of this state, any casks of flour not inspected and branded as aforesaid, on pain of forfeiting ten dollars for every cask of flour so exported or put on board.

If any person shall pack flour or meal of any kind whatever in any cask which has been inspected and branded with the name of the miller, such person shall forfeit twenty dollars for every barrel so packed for sale, one-half to the use of the informer, the other half to the miller who has been injured by such false packing, and be further liable to the action of the party aggrieved.

Every inspector of flour, before he enters on the execution of his office, shall take an oath or affirmation;—for which, see *Oaths*.

No inspector of flour shall, directly or indirectly purchase any flour by him condemned, or any other flour whatsoever, other than for his own use, under the penalty of seven dollars for every barrel by him purchased.

If any person shall alter the mark branded on any cask of flour by an inspector; or shall mark or brand any cask of flour which has not been inspected, with any mark or brand similar to, or in imitation of any inspectors mark or brand; or after an inspector shall have passed any cask of flour as merchantable, shall pack into such cask any other flour; or after such cask of flour shall be branded 'condemned,' shall unpack and repack the same in other casks for exportation, such person shall forfeit seven dollars for every cask.

The courts of the several counties in which the before mentioned places are situate, may, upon conviction, at any time remove from office any inspector of flour, for neglect of duty, malfeasance, or corrupt practices, and appoint another for the residue of the year.

Each penalty by this act imposed (except that which is given one-half to the informer and the other half to the miller) may be recovered in an action of debt, before any jurisdiction having cognizance thereof, to the use of the person suing for the same.

By acts of 1811, c. 2, whenever any person may think himself aggrieved by the improper decision of any inspector of flour, the owner or his agent may secure it for further examination; which examination he shall cause to be made within sixty days, by applying to a justice of the peace; whose duty it shall be to issue a warrant directed to three indifferent persons well skilled in the manufacture of flour; one of whom shall be named by the possessor of the flour, one by the inspector, and the third by the magistrate;—which three persons, having first taken the oath or affirmation prescribed for inspectors of flour, shall proceed to examine said flour. And if they, or any two or more of them shall differ in opinion with the inspector as to the quality of the flour, it shall be the duty of the inspector to brand and mark the same according to their judgment; and moreover, shall pay all costs attending said examination. But if they shall be of opinion that the judgment of the inspector is correct, the owner or possessor of said flour shall pay costs.

An inspector, in case the quantity of flour be too great for him to examine with sufficient despatch, or in case of his inability from sickness, may appoint one or more persons of good repute and skill in the quality of flour, to assist him. Such assistants having taken the oath prescribed, are authorised to inspect and brand flour in the same manner as the inspector himself may do. Provided, that the said inspector shall be liable for the misconduct of his deputies, and for cost in cases of appeal as aforesaid.

If any master, owner, or commander of any ship, vessel, boat, or craft, shall receive any barrel of flour on board his vessel, boat or craft, for exportation, or transportation from one town or port, being a place of inspection, to another, which is not inspected, approved, and branded, as in the aforesaid act is directed, shall forfeit five dollars for each cask so received, recoverable in action of debt, before any

jurisdiction having cognizance thereof, to the use of the person suing for the same. But see acts of 1813, c. 5, *post.*

Any cask of flour which has been inspected and branded at any one place of inspection in this state, shall not be subject to re-examination or inspection in another, unless after such inspection it shall have remained for the space of sixty days before it is exported. And in all cases, the certificate of the inspector shall be conclusive evidence of the time when the flour was inspected.

No inspector of flour within this state, or their deputies, shall directly or indirectly vend, barter, sell, exchange, or trade in flour, bread, or other articles made of flour, under the penalty of 100*l.* to be recovered by action of debt or plaint, by any person who will sue for the same to effect, in any court of record in this state;—the one-half to the use of the person suing, and the other half to the use of the state. And every person so offending and thereof convicted, shall be disabled from acting thereafter in their respective offices.

The county courts in the several counties in this state, from which flour is or may hereafter be exported, are authorised to appoint inspectors of flour for exportation, who shall be governed by the same rules, and subject to the same penalties as other inspectors of flour are by law.

By acts of 1811, c. 9, the justices of the courts of pleas and quarter sessions for the several counties recited in the act of April 1784, c. 26, are authorised and required to appoint, in open court, one or more persons, residing in said county, to inspect the article of ton timber; and every inspector so appointed, before he enters upon the execution of his office, shall give bond with sufficient security, under the same rules, regulations, penalties, and restrictions as are laid down in the before recited act, and shall be entitled for his services, to ten cents per ton.

If any person shall officiate as inspector of any article mentioned in the above recited act, without being legally qualified, he shall for every offence, forfeit thirty pounds to the use of the county in which such person resides.

By acts of 1813, c. 5, within twenty days after the first day of January next, the governor shall appoint two persons of good repute, and who shall be skilful judges of flour, to act as inspectors of flour in Fayetteville, and one person of like character to act as inspector of flour in the city of Raleigh. Each of which said inspectors having taken the oath prescribed by law for his qualification, shall have power to inspect flour, and brand the casks containing the same, under the same rules,

regulations, and restrictions as are prescribed for inspectors of flour in this state. And the said inspectors shall be removable by the governor for the time being, for proper cause to him shown.

From and after the passing of this act, it shall be lawful for the master, owner, or commander of any boat or craft, to receive on board his boat or craft for transportation from Fayetteville to Wilmington, any barrel or barrels of flour not inspected and branded; any thing contained in any law heretofore passed to the contrary notwithstanding.

That the several degrees of flour shall in future be distinguished as follows; to wit, superfine, fine, and cross-middling. And it shall be the duty of inspectors of flour at the several places of inspection in this state, to conform their inspection as near as may be to the inspection of flour observed and in use in the adjacent states.

Each inspector shall receive from the owners of flour by him inspected, five cents for each cask, and no more.

INTEREST.

The lawful interest upon debts in this state is six per cent per annum. And all bonds, bills, notes, bills of exchange, liquidated and settled accounts signed by the debtor, bear interest from the time they become due, unless it be otherwise expressed in the said writings. And if they *express* to be payable *on demand*, interest accrues only from an actual demand made by the creditor, his agent, or attorney, or from the commencement of a suit. But if no time be expressed for the payment, and the words "on demand" be not used the money is due immediately, and interest runs from the date, without demand.

All securities for the payment or delivery of specific articles bear interest as monied contracts. The articles to be rated at the time they become due.

In all actions for money due by contract made subsequent to the act of 1807. c. 12, except on penal bonds, it is the duty of the jury to distinguish by their verdict, the sum due as principal from the sum allowed for interest;—which principal shall carry interest from the time of the judgment until it shall be paid. And the judgment shall be rendered accordingly.

In a suit on a single bond, a covenant for the payment of money, a bill of exchange, a promissory note, or a signed account, to which the defendant does not plead to issue, it shall be law-

ful, upon judgment, without a writ of enquiry, for the clerk of the court to ascertain the amount of interest due by law; and the said amount shall be included in the final judgment of the court, as damages; which judgment is to be rendered as last abovementioned.

All judgments given by a justice of the peace shall bear interest on the original sum until the same shall be actually paid or otherwise settled.

JURORS.

At the first term of the county courts of pleas and quarter sessions after the first day of January, 1807, and once at least in every two years thereafter, every of the said county courts shall cause the jury lists to be made up from the tax returns for the preceding year, which tax returns shall be furnished by the clerk of the court, whenever thereto required by said court And the justices attending at such court, shall cause to be transcribed therefrom, the names of all such persons as are by law qualified to serve as jurors, (excepting those who from age, infirmity, or from any other cause, may be unfit to serve as jurors) whose names shall be written on small scrolls of paper of equal size and put into a box to be procured for that purpose, which shall have two divisions, marked "No. 1 and 2," and two locks; the key of one to be safely kept by the sheriff of the county, the other by the chairman of the county court; and the box by the clerk of said court. And the justices at each and every session of their said court, which shall happen next preceding the superior court of the said county, shall cause to be drawn from the said jury box, out of the partition marked "No. 1," by a child not more than ten years of age, thirty persons, who shall serve as jurors at the next succeeding superior court to be held for said county. Provided always, that whensoever the county court of such county shall be held within fifteen days of the sitting of the superior court of the same, then the court preceding such county court, shall draw the jury as aforesaid. And provided further, that in case any of the jurors so drawn shall have a suit pending and at issue in the superior court, the several scroll or scrolls with his or their name or names, shall be turned into the partition "No. 1," of the jury box; or if any of the said persons so drawn shall be dead, or removed out the county, the said scrolls with their names, to be destroy and other jurors shall be drawn in their stead. And t

scrolls drawn as aforesaid, shall be put into the partition marked 'No. 2;' and the clerk shall furnish the sheriff with a list of the jurors so drawn, who shall be bound to summon the same at least ten days before court, to attend at the court for which they are appointed, and the said jurors shall be bound to attend said court. Provided further, that if before the expiration of two years, the names of the jurors in the partition 'No. 1,' shall be drawn out, then the whole names shall be put into the said partition marked 'No. 1,' and drawn out again as first directed. And there shall also be put into the said partition marked 'No. 1,' at the court following every first day of January in each year, the names of such persons as shall appear, by the tax lists immediately preceding, to have become qualified to serve as jurors since the making out the general biennial list; subject however to the exceptions aforesaid.

It is the duty of the justices, in the appointment of jurors as aforesaid, to select and choose such only as are well qualified to discharge the important trust and duty of jurors.

The jurors of the courts of pleas and quarter sessions shall be appointed in the same manner, and drawn out of the same box, as jurors to the superior courts of law and equity. Provided, that should the name of any justice of the peace be drawn for the county court, the same shall be returned into the box from which it was taken, and another ticket drawn out in his place.

A list of the jurors so drawn shall be delivered by the clerk to the sheriff, who must summon them five days before court.

The jurors of the superior and county courts, as well talesmen as those of the original panels must be freeholders.

The penalties imposed on jurors of the original panel for non-attendance, are ten pounds in the superior court, and a sum not exceeding five pounds, nor under forty shillings, in the county court. And on a talesman, in either court, a sum not exceeding twenty shillings at the discretion of the court. In the latter case, the court shall order the clerk forthwith to issue an execution against the body or goods of the delinquent for the amercement and costs. But a delinquent juror of the original panel in either court shall have till the next succeeding term to make his excuse to said court; and if he shall then render, to the satisfaction of the court, sufficient excuse, he shall be discharged without costs. And if he be a delinquent juror of the superior court, it shall be lawful for him to send forward his excuse to such court on oath, setting forth

the reason why he cannot attend; which, if adjudged sufficient, shall exonerate him from the fine and all costs.

The sheriff shall, during the sitting of any court, by order of court, summon as many as shall be necessary of talesmen, or by-standers, to serve as jurors from day to day. And service of summons will be good as to a juror of the originial panel, if the sheriff leave a note or summons in writing at the dwelling house of such person.

No sheriff or other officer shall serve or execute any writ or other process on the body of any juror, during his attendance on, going to, or returning from any of the said superior or county courts. Any such service shall be void, and the defendant may on motion be discharged.

It shall be the duty of the clerks of the several superior and county courts, before a jury shall be impannelled to try the issue or issues in any civil cause depending therein; or in any suit or prosecution wherein the state is a party (except in case of capital offences) to read over the names of the jury upon the panel in the presence and hearing of the parties or their counsel. And it shall be competent for either plaintiff or defendant, or their counsel, in civil cases between individuals, and for the defendants, or their counsel, in suits or prosecutions wherein the state shall be a party, to challenge peremptorily four jurors upon the said panel, without showing any cause therefor; which challenge shall be allowed by the court, and the panel shall then be made up as in other cases.

All regularly bred physicians, or practitioners of physic and surgery, are exempt from serving as jurors, either in the county or superior courts.

The several county courts have power to lay a tax for the purpose of paying their jurors, both in the superior and county courts, a sum adequate to their services, which shall not exceed one dollar and fifty cents, nor be less than fifty cents per day; and a sum equal to the daily allowance for every thirty miles travelling to and from said courts: provided, that a majority of the justices of said county be present when the said tax shall be laid, and that said tax shall not exceed ten cents on each poll and the like sum on every $ 300 value of town property and of land, for the purpose abovementioned; which taxes shall be collected and accounted for as other county taxes are now or may hereafter be accounted for.

The sheriff shall account to the county court for fines levied on delinquent jurors.

Petit jurors are sworn well and truly to try all civil causes that shall come before them, &c. Talesmen, to try such causes as come before them during that day.

When eighteen or more jurors appear in the superior court, their names are written on scrolls of paper, which are put into a box, and drawn out by a child under ten years of age; and the first eighteen drawn, shall be the grand jury. A similar practice is pursued in the county court.

The jurors when called, both in criminal and civil cases, may be challenged by either party.

Challenges are of two sorts,—to the *array* and to the *polls*.

Challenges to the array, are at once an exception to the whole panel in which the jury are arrayed and set in order by the sheriff in his return; and may be made for partiality, or some default in the sheriff, or his under officer who arrayed the panel. If he be a party to the suit, or be related by either blood or affinity to either of the parties, the array shall be quashed: or if he arrays the panel at the nomination, or under the direction of either party.

Challenges to the polls, are exceptions to particular jurors. These are of three sorts,—for insufficiency, for affection, and for some crime or misdemeanor.

1st. For insufficiency.—As if he be an alien not naturalized, a slave, or bondman; or if the person offered as juror, be a woman; or if he be not a freeholder.

2d. For affection.—And there the challenge is of two kinds —a principal challenge, or to the favour. A principal challenge is such, when the cause assigned carries with it, on its first appearance, evident marks of suspicion, either of malice or favour,—as that the juror is of kin to either party within the ninth degree; that he has been an arbitrator on either side; that he has an interest in the cause; that there is an action depending between him and the party; that he has taken money for his verdict; that he is the party's master, servant, counsellor, steward, or attorney; or of the same society or corporation with him. All these are principal causes of challenge, and if true, cannot be overruled.

Challenges to the favour are, where the party hath no principal challenge, but objects only to some probable circumstances of suspicion,—as acquaintance and the like,—the validity of which must be left to triers, who are to decide whether the juror be favourable or unfavourable. The triers, in case the first men called be challenged, are two indifferent persons, named by the court. And if they try one man and find him

indifferent, he shall be sworn; and then he and the two triers shall try the next: and when another is found indifferent and sworn, the two triers shall be superseded, and the two first sworn on the jury shall try the next. In civil cases however, the jurors being sworn to try all causes, the exception may be made before they are charged with the cause, and if found true, they shall be removed from the jury, although sworn to try all causes

To this head may be referred the peremptory challenge of four jurors, as aforesaid.

3d. For some crime or misdemeanor affecting the juror's credit and rendering him infamous.—As for a conviction of treason, felony, perjury, or conspiracy; or if the hath received judgment of the pillory or the like; or to be branded, whipped, or stigmatized; or hath been attainted of forgery. A juror may himself be examined with respect to causes of challenge which are not to his dishonour: but not with regard to this head of challenge, for a crime or misdemeanor which would be to make him either forswear or accuse himself if guilty.

The foregoing challenges are common to both civil and criminal cases: but in criminal cases which are capital, the prisoner is allowed an arbitrary or capricious species of challenge, to a certain number of jurors, without assigning any reason at all; which is called a peremptory challenge, and is by our law to the number of thirty-five.

The state shall not challenge any jurors without assigning a cause certain: but the state need not assign its cause of challenge till the pannel is gone through, and unless there cannot be a full jury without the persons so challenged; and then, and not sooner, the state's counsel must show the cause, or the jury shall be sworn.

No challenge can be taken till a full jury have appeared, and then the challenger must make all his challenges at once.

After a challenge to the array, and trial duly returned, if the same party challenge the polls, he must show cause presently.

When the state is party, the defendant that challenges for cause, must show his cause presently.

After the evidence given upon the issue the jury ought to be kept together in some convenient place, without meat or drink, fire or candle, otherwise than with the leave of the court. They ought not to be allowed to speak with any stranger, unless with the constable that attends them, and with him only after they are agreed upon their verdict. And

before they retire, a constable shall be sworn thus to keep them.

When all the twelve jurors agree together, they may make up a verdict, which must be delivered by their foreman.

The verdict is then said to be delivered, when it is openly pronounced in court; and when they come into court to give their verdict, the plaintiff shall be demanded, and then may be nonsuited by not answering.

Verdicts are of two kinds,—general and special.

General, which is positive either in the affirmative or negative,—as *guilty*, or *not guilty*.

Special, where they find the special matter, leaving it to the judges to determine what is the law. It may be either upon a general or special issue. It may be also in either civil or criminal cases, and the court cannot refuse a special verdict appurtenant to the matter in issue.

A verdict may also be public or privy,—Public, which is given in open court.—Privy, which is given out of court, before any of the judges or justices of the court. But they may vary from this in open court when their public verdict is given. After it is recorded they cannot vary from it, but before they may.

In criminal matters they cannot give a privy verdict, nor can they be discharged till they have given their verdict. If they separate in a capital case without giving a verdict that acquits the prisoner.

Jurors cannot be fined, imprisoned, or punished for finding a verdict contrary to the direction of the judge. Yet, in many instances, where, contrary to evidence, they have found the prisoner guilty, their verdict hath been mercifully set aside, and a new trial granted. But no new trial hath been granted where the prisoner was acquitted upon the first.

A privy verdict can only be delivered by consent of the judge or justice. But it is a dangerous practice, allowing time for the parties to tamper with the jury, and therefore very seldom indulged.—*Blac. Com.* 377.

By act of assembly, the judges of the superior courts of law are authorised, upon application of the defendant, to grant new trials in criminal cases, where the defendant is found guilty, in the same manner, and under the same rules, regulations, and restrictions as in civil cases.

It is not lawful for any judge, in delivering a charge to a pettit jury, to give an opinion whether a fact is fully or sufficiently proved, such matter being the true office and province of the jury. But it is the duty of the judge in such cases, to

state in a full and correct manner the facts given in evidence, and to declare and explain the law arising thereon.

Each juror, for attending on the premises, to pass on a petition for damages against the proprietor of a mill, shall be entitled to eight shillings per day and four pence a mile for travelling to and from the place of trial; an account of which they shall render on oath to the sheriff after making up their verdict to be returned therewith to court.

If a jury eat or drink at all, or have any eatables about them without consent of the court and before verdict, it is fineable; and if they do so at his charge for whom they afterwards find, it will set aside the verdict. Also if they speak with either of the parties or their agents after they have gone from the bar, or if they receive any fresh evidence in private, or if they cast lots for whom they shall find. Any of these circumstances will vitiate the verdict entirely.

In a capital case, a juror may be asked upon his oath, whether he had not said the prisoner was guilty, or would be hanged.

JUSTICES OF THE PEACE.

Justices of the Peace within the respective counties of this state, shall be recommended to the governor for the time being by the representatives in general assembly, and the governor shall commission them accordingly. And the justices when so commissioned, shall hold their offices during good behaviour, and shall not be removed from office by the general assembly, unless for misbehaviour, absence, or inability.—*Constitution* § 38.

Where any justice shall remove himself out of the county, and shall not return within twelve months to reside therein, his appointment shall be void. And if he shall in any manner presume to act in the county for which he was appointed after such removal, unless re-appointed by the general assembly, he shall forfeit fifty pounds for every offence; to be recovered by action of debt and applied one half to the use of the state, the other half to the use of the prosecutor.

Every person appointed a justice, shall qualify within twelve months thereafter; and shall not be permitted to qualify afterwards, unless re-appointed by the general assembly.

No justice being a candidate for the office of sheriff, shall vote or sit on the bench at the election, on pain of forfeiting fifty pounds for every offence; to be recovered by action of

debt, one half to the prosecutor and the other half to the county: and his vote shall not be counted.

Also if he is a candidate for the office of county court clerk, register, entry-taker, surveyor, county trustee, or ranger, he shall not be counted, and he shall forfeit as last above mentioned, recoverable in the same manner and to the same uses.

A majority of the acting justices belonging to the county, shall be present at the laying a tax for repairing public buildings, building of bridges, or any other county tax, or in making allowances for extra services to the clerk or sheriff, or in allowing any other claims against the county. Five shall be present when orders are made for clearing out inland rivers and creeks, and for appointing hands and overseers to carry their orders into effect. A majority of the justices of the court of pleas and quarter-sessions of the county where a vacancy shall be, shall appoint a clerk of the county court to fill such vacancy. Also a majority shall be present when any order is made for establishing a fair or fairs. A majority shall be present when a treasurer of public buildings, and commissioners to contract for alterations and repairs, are appointed. And seven when petitions for correcting errors in grants or patents, or in the registration of deeds, are heard.

Also to remit or mitigate fines by them inflicted, seven must be on the bench, and three of the seven must have been present when said fine was inflicted. And in the remission or mitigation of forfeitures on recognizances, five must be present.

Every person appointed a justice, shall before entering upon and executing the said office, publicly in the courthouse of his county, on a court day, take the oaths for the qualification of public officers, and an oath of office,—which see under *Oaths*. Otherwise he shall forfeit 100*l*. (equal to eighty pounds) one half to the state, the other to the prosecutor; recoverable by action of debt in any court of record.

Regularly, justices of the peace ought not to execute their office in their own case, but cause the offender to be convened or carried before some other justice, or desire the aid of some other justice being present. If he sit in judgment in a civil case upon his own cause, he is liable to be punished for so doing, or the proceedings may be quashed. But in some cases of a criminal nature, he may proceed though the offence be committed against himself. As when he is assaulted, or shall be abused to his face, and no other justice be with him, especially if it be in the execution of his office, he may commit the

offender until he find sureties for the peace or good behaviour; but if another justice be present, it is better for him to act.

If a justice is guilty of any error or irregularity, in making or issuing a warrant for a matter or cause in which he has jurisdiction, the constable or other officer must execute it: but if it be for a matter of which he has not jurisdiction, the officer must not execute it,—as if he issue his warrant for slander, or the like.

If a justice perceives that he has been deceived or surprised into any measure, or that he has acted therein illegally or irregularly, he may issue a *supersedeas*, and prevent any further proceeding thereon.

In all cases where he is empowered by act of assembly to give judgment upon conviction for a penalty, the party ought to be summoned and to have notice to appear and defend himself; and if the justice proceeds otherwise, he may be indicted.

If a justice of the peace refuses to proceed in a cause depending before him, he may be compelled by *mandamus* from the superior court to proceed therein: or if he will not proceed, or entire proceeding, to execute any act of assembly inflicting a penalty which he has cognizance of, especially if such conduct be out of favour to the offender, he may be indicted.

The justices ought to make a record in all cases of conviction before them, for penalties, where they are empowered to hear and determine out of court, and should write down under their hands all matters and proofs; though in many cases they are to keep the record themselves, for at some time or other it may be wanted and sent for by the superior court, or the justice himself may have occasion to produce it, if sued for what he has done in relation thereto.

A justice of the peace may issue his warrant for apprehending persons charged with any crimes or misdemeanors whatsoever, that are indictable in the superior or county court; and if necessary, bind over the offenders to that court where the offence may be tried, and the witnesses; and also may take the examination of the offender in writing, and send the same to court.

A man is indictable for saying to a justice in the execution of his office, that he is a rogue, liar, villain, or the like opprobrious words: or the justice may commit him.—*Str.* 617. *L Ray.* 1369. *Str.* 420, 1157. And he may be bound to his good behaviour if he abuses a justice before his face, in relation to his office.

A justice of the peace ought not to be proceeded against harshly nor will he be in any case, even though he acts illegally, if he has acted honestly and candidly, without oppression, malice, revenge, or any bad view or ill intention whatsoever. But if he acts illegally for any such purpose, he is then indictable, and his conduct will and ought to be animadverted on with severity.

The power of a justice of the peace is determined by being made sheriff or coroner, or other officer, whose duties are incompatible with the office of a justice.

A justice cannot issue his warrant to break open any man's house, to search for stolen goods or for a felon, upon a bare surmise.

No court of pleas and quarter sessions shall admit to the bar of such court, as a practising attorney, any person who holds the office of a justice of the peace in said county until the person shall first tender to the court a resignation of his said office, to be by the court transmitted to the competent authority. And if a practising attorney in such court accepts the appointment of a justice of the peace in said county, he shall before he is permitted to qualify, cause to be entered on the records of the said court a resignation of all claims to practise therein as attorney, so long as he shall keep the office aforesaid; and that during the time he may keep the office, he shall not be heard or received as an attorney of said court.

The following appointments are declared to be incompatible with the office of a justice of the peace, viz. clerk and deputy clerk of the court of pleas and quarter sessions, deputy sheriff, constable, county trustee, and jailor. For a violation of this provision the penalty is fifty pounds.

But a justice of the peace is permitted to accept and exercise any civil office or appointment of profit or trust, under the authority of the United States, the duties whereof shall be confined to this state.

If any sheriff, clerk, entry-taker, or register shall be permitted to officiate as such, and to discharge any of the duties of their respective appointments, without having first qualified and given bond with security according to law, the justices who sat on the bench or were in court at the time of the appointment, shall be considered bound as the sureties of such officer thus acting and availing himself of such his appointment without having first given bond as aforesaid, in the same degree as though they had been formally bound; and may be proceeded against as such.

In all actions at law, wherein it may be necessary to prove a demand upon the drawer of a bill of exchange or the maker of a promissory note or other negotiable security, the protest of a notary public, or for the want of a notary public, of a justice of the peace, shall be evidence of the demand as in cases of foreign bills of exchange.

LANDS.

When a guardian shall have notice of any debt or demand against the estate of his or her ward, on his application the county court shall make an order, specifying what property, either real or personal, may be sold; and such property shall be sold under the same regulations as property sold by executors or administrators is or may be by law.

When an execution is in the hands of a constable, in consequence of a judgment from any justice of the peace out of court, against the executors or administrators of a deceased debtor, and they shall deny that they have assets, to satisfy the same, the constable shall levy the execution on the real estate of the deceased debtor, and make return of the proceedings to the next county court; but before the court shall make an order to sell the same, a writ or writs of *scire facias* shall issue against the heirs and devisees of such deceased debtor, or in case there be no heirs or devisees, against the president and trustees of the University of North Carolina, under the same regulations and restrictions as in case of judgments in courts, summoning them to appear and show cause why such real estate should not be sold.

Any person or persons owning pocoson or flat lands within this state, and being desirous to drain the same, but is prevented by the proprietor or proprietors of lands adjoining him or them, it shall and may be lawful for such person or persons who are desirous to drain their said pocoson or flat lands, to prefer a petition to the court of the county wherein the said lands are situated, setting forth the particular circumstances of his or her case, situation of their lands, and to what stream or water course he or she would wish to drain the same; whereupon the court shall appoint twelve freeholders in the said county, not attached to either party by consanguinity or affinity, who shall go upon the premises and examine the ground so petitioned to be drained, and that through which said canal or ditch shall pass, as also whether such canal or ditch shall appear necessary. And further, they shall direct the ditch to

be cut in such manner and extent, as in their opinion will effectually secure the lands through which it passes, as well as that where it terminates, from inundation. And the jury aforesaid shall upon oath value and assess what damages the proprietor or proprietors of the land where such drain is to be cut shall sustain. And where the same shall appear necessary, the damages shall be paid before the petitioner or petitioners proceed to cut a ditch or ditches through or into such proprietor or proprietors' lands. And when the petitioner or petitioners aforesaid, shall have so paid to the proprietor or proprietors of such lands as aforesaid, the damages or injury the jury might judge he or they sustained, he or they, their heirs or assigns, so paying, shall thereafter be vested with a good and sufficient title in fee for the lands so petitioned for.

In all cases where a jury is appointed for the purposes aforesaid, it shall be their duty to make a fair return of the whole of their proceedings to the next succeeding county court, which shall be recorded in the said courts respectively; and each of the jury appointed as aforesaid, shall be entitled to the sum of eight shillings for each day that they may necessarily be employed in laying off said ground; which sums shall be paid to each juryman by the petitioner or petitioners. But nothing in the law shall be construed so as to affect any person or person's cleared land or houses, unless by and with the consent of the proprietor or proprietors of said land. And no such drain or ditch shall be cut so as to injure any pond or ponds belonging to any mill or mills which now are or hereafter may be established by law, or to prevent the proprietor or proprietors through whose lands the said ditch or canal may pass, from putting a fence or bridge across the same, provided such fence or bridge shall not obstruct the free passage of the water down said canal or ditch.—*Hayw.*

It is the duty of the courts of pleas and quarter sessions respectively, to appoint some person capable of surveying, to procession the lands in each district of the county, for all such as desire their lands processioned,—and to fill vacancies when they occur. For the Oath of a Processioner—see *Oaths.*

The proprietor of the land which is about to be processioned, shall give ten days' notice in writing, to all the proprietors of adjoining lands, and shall deliver the notice to the processioner, signed by the person who served it.

The processioner shall return to the clerk of his county court, together with a copy of the several notices, a certificate signed by himself for each tract of land by him processioned,

containing the claimant's name, the quantity of acres, the corners, and number of poles contained in each line; which certificate the clerk shall record in a bound book specially kept for that purpose, and file the same with the notices in his office.

The proprietor of the land shall pay to the processioner half the fees allowed by law for surveying lands, and to the clerk two shillings for every certificate by him recorded.

If a tract of land lie partly in one county and partly in another, the processioner, on application, shall procession that part which lies in his own district.

Where a line is disputed and the processioner forbidden by either of the parties interested, to proceed in running and marking the same, it is the duty of the processioner to report the same, stating truly all the circumstances of the case, with the name of the person or persons who forbad the further proceeding, to the next succeeding county court for the county wherein the land lies; and it is the duty of said court thereupon, to appoint five respectable freeholders, whose duty it shall be to appear with the processioner on the line or lines so disputed, and proceed, after being sworn to do equal right and justice between the contending parties, to establish such disputed line or lines as shall appear to them right, and procession the same, and make report of their proceedings to the next succeeding court; which proceedings shall be recorded as above directed; but either of the contending parties may call in any other surveyor to act with the processioner and complete such survey. And the party against whom the decision is made, shall pay all costs.

LARCENY.

Larceny, or theft, is of two kinds. 1st. Simple larceny, or plain theft, unaccompanied with any other atrocious circumstance. 2d. Mixed or compound larceny, which also includes in it the aggravation of a taking from one's house or person.

Again. Simple larceny is of two kinds,—grand and petit.

It is called grand larceny, when the goods stolen are above the value of twelve pence. It is called petit larceny, when the goods are of that value or under.

SIMPLE LARCENY.

First, then, of simple larceny,—which is, the felonious taking and carrying away of the personal goods of another.

1st. It must be a taking. This implies the consent of the owner to be wanting. Therefore no delivery of the goods from the owner to the offender, upon trust, can ground a larceny.—As if A lends B a horse, and he rides away with him; or if I send goods by a carrier, and he carries them away,—these are no larcenies. But if the carrier opens a bale or pack of goods, or pierces a vessel of wine, and takes away part thereof; or if he carries it to the place appointed, and afterwards takes away the whole,—these are larcenies. For here the *animus furandi* is manifest; since in the first case he had otherwise no inducement to open the goods—and in the second the trust was determined,—the delivery having taken its effect. But bare non-delivery shall not of course be intended to arise from a felonious design; since that may happen from a variety of other accidents. Neither by the common law was it larceny in any servant to run away with the goods committed to him to keep, but only a breach of civil trust. But by statute 21 Hen. 8, c. 7, if any servant embezzles his master's goods to the value of forty shillings, it is made felony, except in apprentices and servants under eighteen years old. But if he had not the possession, but only the care and oversight of the goods, as the butler of plate, the shepherd of sheep, and the like, the embezzling of them is felony at common law. So, if a guest robs his inn or tavern of a piece of plate, it is larceny; for he has not the possession delivered to him, but merely the use. Under some circumstances also, a man may be guilty of felony in taking his own goods:—as if he steals them from a pawn broker, or one to whom he hath delivered and entrusted them with intent to charge such bailee with the value.

2d. There must not only be a taking, but a carrying away. A bare removal from the place in which he found the goods, though the thief does not quite make off with them, is a sufficient asportation or carrying away; as if a man be leading another's horse out of a close, and be apprehended in the fact; or if a guest stealing goods out of an inn, has removed them from his chamber down stairs,—these have been adjudged sufficient carrying-away to constitute larceny. Or if a thief, intending to steal plate, takes it out of a chest in which it was, and lays it down upon the floor, but is surprised before he can make his escape with it,—this is larceny.

3d. This taking and carrying away, must also be felonious. That is, done with intent to steal; or, as the civil law expresses it, for the sake of gain. This requisite, besides excusing those who labour under incapacities of mind or will, in-

demnifies also mere trespassers, and other petty offenders;—as if a servant takes his master's horse without his knowledge and brings him home again: if a neighbour takes another's plough that is left in the field, and uses it upon his own land, and then returns it: if under colour of arrear of rent where none is due, I distrain another's cattle or seize them;—all these are misdemeanors and trespasses, but no felonies. The ordinary discovery of a felonious intent is, where the party doth it clandestinely; or being charged with the fact denies it. But this is by no means the only criterion of criminalty; for in cases that may amount to larceny, the variety of circumstances is so great, and the complications thereof so mingled, that it is impossible to recount all those which may evidence a felonious intent, or *animum furandi*—wherefore they must be left to the due and attentive consideration of the court and jury.

4th. This felonious taking and carrying away, must be of the personal goods of another. For if they are things real, or savour of the realty, larceny at the common law cannot be committed of them. Lands, tenements, and hereditaments, (either corporeal or incorporeal) cannot in their nature be taken and carried away. And of things likewise that adhere to the freehold, as corn, grass, trees, and the like, or lead upon a house, no larceny can be committed; but the severance of them is merely a trespass, which depends on a subtilty in the legal notions of our ancestors. These things were parcel of the real estate, and therefore while they continued so, could not by any possibility be the subject of theft, being absolutely fixed and immoveable; and if they were severed by violence, so as to be changed into moveables, and at the same time, by one and the same continued act, carried off by the person who severed them, they could never be said to be taken from the proprietor, in this their newly acquired state of mobility (which is essential to the nature of larceny) being never, as such, in the actual or constructive possession of any one but of him who committed the trespass. He could not in strictness be said to have taken what at that time were the personal goods of another, since the very act of taking was what turned them into personal goods. But if the thief severs them at one time, whereby the trespass is completed, and they are converted into personal chattels in the constructive possession of him on whose soil they are left or laid, and comes again at another time, when they are so turned into personalty, and takes them away, it is larceny. And so it is if the owner or any one else has severed them. Upon nearly the same principle, the

stealing of writings relating to real estate, is no felony, but a trespass; because they concern land, or (or according to our technical language) savour of the realty, and are considered as part of it by the law, so that they descend to the heir, together with the land which they concern.

[But by acts of 1811, c. 13, the stealing or feloniously taking and carrying away any growing, standing, or ungathered corn, maize, cotton, or rice, shall hereafter be held and deemed larceny; and every person convicted thereof shall suffer punishment as in other cases of larceny.]

Bonds, bills, and notes which concern mere choses in action, are also not such goods whereof larceny at the common law may be committed, being of no intrinsic value, and not importing any property in the possession of the person from whom they were taken.

[But by acts of 1811, c. 11, if any person or persons shall feloniously steal, take, and carry away, or take by robbery any bank note, check, or order, for payment of money, issued or drawn on any bank or other society or corporation within this state, or within any of the United States; or any treasury warrant, debenture, certificate of stock, or other public security; or any order, bill of exchange, bond, promissory note, or other obligation, either for the payment of money or for the delivery of specific articles, being the property of any other person or persons or of any corporation, (notwithstanding any of said particulars may be termed in law a chose in action), such felonious stealing, taking, and carrying away, or taking by robbery, shall be deemed and construed to be felony of the same nature and in the same degree, and with or without benefit of clergy, in the same manner as it would have been if the offender had feloniously stolen or taken by robbery, money, goods, or property of like value with the money or specific articles due or expressed on the face of such bank note or other paper as aforesaid, or secured thereby and remaining unsatisfied. And such offender, for every such offence, being thereof legally convicted, shall suffer such punishment, and be subject to such pains, penalties, and disabilities, as he or she should or might have suffered, if such offender had feloniously stolen or taken by robbery, money, goods, or other property of the like value with the money or specific articles, due or expressed on the face of such bank note or other paper as aforesaid respectively, or secured thereby and remaining unsatisfied.]

Larceny also cannot be committed of such animals in which there is no property either absolute or qualified;—as of beasts that are *feræ naturæ*, and unreclaimed,—such as deer, hares, and conies in a forest, chase, or warren; fish in an open river or pond, or wild fowls at their natural liberty. But if they are reclaimed or confined, and may serve for food, it is otherwise. For of deer so enclosed in a park that they may be taken at pleasure, fish in a trunk, and pheasants or partridges in a mew, larceny may be committed. But of all valuable domestic animals, as horses, and all tamed animals which serve for food, as swine, sheep, poultry, and the like, larceny may be committed: and also of the flesh of such as are wild when killed. As to those animals which do not serve for food, and which therefore the law holds to have no intrinsic value, as dogs of all sorts, and other creatures kept for whim and pleasure, though a man may have a base property therein, and maintain a civil action for the loss of them, yet they are not of such estimation, as that the crime of stealing them amounts to larceny.

Notwithstanding however, that no larceny can be committed, unless there be some property in the thing taken, and an owner; yet if the owner be unknown, provided there be a property, it is larceny to steal it, and an indictment will lie for the goods of a person unknown. This is the case of stealing a shroud out of a grave, which is the property of those, whoever they were, that buried the deceased. But stealing the corpse itself, which has no owner (though a matter of great indecency, and punishable by fine and imprisonment) is no felony unless some of the grave clothes be stolen with it.

The inferior species of theft, or petit larceny, is only punished by whipping. But the punishment for grand larceny, or stealing above the value of twelve pence, (which sum was the standard more than eight hundred years ago) is at common law regularly death.

Which, considering the great intermediate depreciation of money, is undoubtedly a very rigorous constitution; and made sir Henry Spelman (nearly two centuries since, when money was at thrice its present rate) complain, that while every thing else was risen in its nominal value, and become dearer, the life of man had continually grown cheaper.

It is true that the benefit of clergy is extended to most cases of larceny, for the first offence. So that in all such cases the felon is excused the pains of death.

COMPOUND LARCENY.

Mixed or compound larceny, is such as has all the properties of the former, but is accompanied with one or both the aggravations, of a taking from one's house, or person.

First, therefore, of larceny from the house, and then of larceny from the person.

LARCENY FROM THE HOUSE.

Larceny from the house, though it seems to have a higher degree of guilt than simple larceny, yet is not at all distinguished from the other at common law, unless where it is accompanied with the circumstance of breaking the house by night; and then we have seen that it falls under another description, viz. that of burglary. But now by several acts of parliament, the benefit of clergy is taken away from larcenies committed in a house, in several instances, viz. 1st, in all larcenies above the value of twelve pence from a church, or from a dwelling house or booth, any person being therein. 2d, In all larcenies to the value of five shillings, committed by breaking the dwelling house, though no person be therein.

LARCENY FROM THE PERSON.

Larceny from the person, is either by privately stealing, or by open and violent assault, which is usually called robbery.

PICKPOCKET.

The offence of privately stealing from a man's person, as by picking his pocket or the like, without his knowledge, was debarred of the benefit clergy so early as by the statute 8 Eliz. c. 14. But then it must be such a larceny as stands in need of the benefit of clergy, viz. of above the value of twelve pence, else the offender shall not have judgment of death. For the statute creates no new offence, but only takes away the benefit of clergy, which was a matter of grace, and leaves the thief to the regular judgment of the ancient law.

ROBBERY.

Open and violent larceny from the person, or robbery, is the felonious and forcible taking from the person of another, goods, money, or any other article mentioned in acts of 1811, c. 11, as aforesaid, to any value, by putting him in fear.

1st. There must be a taking, otherwise it is no robbery. If the thief, having once taken a purse, returns it, still it is a robbery. And so it is whether the taking be strictly from the

person of another, or in his presence only,—as where a robber by menaces and violence, puts a man in fear, and drives away his sheep or his cattle before his face.

2d. It is immaterial of what value the thing taken is. A penny as well as a pound, thus forcibly extorted, makes a robbery.

3d. Lastly, the taking must be by force, or a previous putting in fear, which makes the violation of the person more atrocious than privately stealing. This previous putting in fear, is the criterion that distinguishes robbery from other larcenies. For if one privately steals six pence from the person of another, and afterwards keeps it by putting him in fear,—this is no robbery, for the fear is subsequent. Neither is it capital as privately stealing; being under the value of twelve pence. Yet this putting in fear, does not imply that any great degree of terror or affright in the party robbed, is necessary to constitute a robbery. It is sufficient that so much force, or threatening by word or gesture, be used, as might create an apprehension of danger, or oblige a man to part with his property without or against his consent. Thus if a man be knocked down without previous warning, and stripped of his property while senseless, though strictly he cannot be said to be put in fear; yet this is undoubtedly a robbery. Or if a person with a sword drawn begs alms, and I give it him through mistrust and apprehension of violence,—this is a felonious robbery. So if under a pretence of sale, a man forcibly extorts money from another,—neither shall this subterfuge avail him. But it is doubted whether the forcing a higgler or other chapman to sell his wares, and give him the full value of them, amounts to so heinous a crime as robbery.

This species of larceny is debarred of the benefit of clergy, by statute 23 Hen. 8, c. 1, and other subsequent statutes; not indeed in general, but only when committed in or near the highway. A robbery therefore committed in a distant field or foot-path, is not punished with death.

See *Arrest, Bail.* And for Forms,—see *Appendix.*

LAW.

Law is a rule of civil conduct prescribed by the supreme power in a state, commanding what is right, and prohibiting what is wrong, Bla. Com. 44, and is susceptible, in this state, of the following division:

1st. The constitution of the United States and the acts of congress made in pursuance thereof, and all treaties made under the authority of the United States, are the supreme law of the land.—*Const. U. S.* art. 4.

2d. The next in order and authority is the constitution of this state.

3d. Acts of assembly passed by the legislature of this state, both before and since the revolution.

4th. Such of the British statutes or acts of parliament as are in force in this country; to wit, such as are applicable to our situation and circumstances and were passed prior to the settlement of the country, which is usually fixed to the year 1607, or the fourth year of James the first of England. Indeed settlements were made in this state by sir Walter Raleigh as early as the year 1585; but the following year, the settlers were carried to Europe by sir Francis Drake, on his return from South America and the West Indies. New colonists however, were afterwards sent over from time to time, who in 1586 amounted to 150 persons of both sexes; but they were totally neglected in 1603, (the time of sir Walter Raleigh's *illegal* conviction of treason, and consequent imprisonment) and so remained for some time. But in 1806 a company was incorporated by charter, called the South Virginia Company, who gave some feeble encouragement to the settlement; and probably the next year was the æra of establishing law and government amongst them; for it is generally agreed, that acts of parliament passed after that time are not in force in this country. Some statutes however, passed after that period, have either been enforced by particular acts of assembly, as the statutes of jeofails, some of which were passed after that period; or have mentioned the colonies, and have been tacitly accepted and acquiesced in, and acted under, as the statute of 5 Geo. 2, c. 7, for the sale of lands.

After the late revolution and the establishing of a new form of government, in order to ascertain what statutes and parts of the common law were in force here, the assembly enacted in the year 1778, that all such statutes and such parts of the common law, as were heretofore in force and use within this ritory, and all the acts of the late general assemblies there- or so much of the said statutes, common law, and acts of ably as are not destructive of, repugnant to, or inconsist- with the freedom and independence of this state, and the form of government therein established; and which have not been otherwise provided for, in the whole or in part; not ab-

rogated, repealed, expired, or become obsolete,—are hereby declared to be in full force within this state.

5th. The common law, which originated in a general custom received and approved of by the people from time immemorial, and is founded upon principles of reason and justice, and handed down to us in juridical records, and adjudications thereupon, made by former judges from time to time; which adjudications, and the reasons upon them, are contained in reports made of them at the time, and transmitted to us in books of reports. In respect to this law, it is an established rule to abide by former precedents which are not evidently against reason or the divine law, where the same points come again in litigation; and this in order to keep the law steady, and not liable to waver with every new judge's opinion. For where the law is uncertain, the people are slaves to the judges; depending for every thing they are permitted to enjoy, upon their whims and caprices, their enmities or good liking.

This compound, forms *the law of the land*, as understood by the twelfth article of our bill of rights.

LAW-BOOKS.

The justices of each county court within this state shall and may have full power and authority, in some convenient time, according to their discretion, to purchase and provide the latest editions of the law-books following; to wit, Nelson's Justice, Cary's Abridgement of the Statutes, Swinburn on Wills, or Godolphin's Orphans' Legacy, and Jacob's Law Dictionary, or Wood's Institutes. Which books, when provided, shall be forever after for the use of the county court; and shall be kept in the offices of the several clerks, and constantly, during the sitting of every county court, laid, by the clerk of each court, on the court table, for the use and perusal of the justices of such court, and of all such as may have any matters depending in court.

If any county court clerk shall abuse or destroy, or suffer to be abused or destroyed, any of the books so committed to his care, he shall be fined at the discretion of the court, for such his neglect; which fine shall be applied towards repairing the loss or damage of such books, occasioned by such neglect.

The justices in the several county courts, shall have full power to lay such an additional tax on their respective counties,

as shall be sufficient to purchase and provide the books aforesaid; and shall apply the same accordingly.

LEWDNESS.

The offence of keeping a bawdy-house, as also all open lewdness, grossly scandalous, is punishable at the common law, upon indictment, by fine, imprisonment, and such infamous punishment as the court in their discretion may direct.

Frequenting houses of ill fame is also indictable, and is punishable by fine and imprisonment.

A wife may be indicted and set in the pillory with her husband, for keeping a brothel. For this is an offence touching the domestic economy or government of the house, in which the wife has a principal share; and is also such an offence as the law presumes to be generally conducted by the intrigues of the female sex.

But if a man be indicted for frequenting a bawdy-house, it must appear that he knew it to be such. And it must be expressly alleged that it is a bawdy-house, and not that it is suspected to be such a house.

And a woman cannot be indicted for being a bawd generally, for the bare solicitation of chastity is not indictable.

By acts of 1805, c. 14, the crimes of fornication and adultery, where a man shall take a woman into his house or a woman a man, and they shall have one or more children without parting or an entire separation; or where it shall be proved to the satisfaction of the court and jury before whom it shall be tried, that they bed or cohabit together, shall be deemed and held indictable offences, and cognizable before any of the superior or county courts in this state. And any person legally convicted of either of the aforesaid offences, shall be fined at the discretion of the court before whom he or she may be tried, in any sum not exceeding 100*l*. Provided always, that the evidence of the person who may be *particeps criminis* shall not be admitted to charge any defendant under this act.

LIBEL.

Libels, taken in their largest and most extensive sense, signify any writing, pictures, or the like, of an immoral or illegal tendency. But, in the sense under which we are now to consider them, are malicious defamations of any person, and

especially a magistrate, made public by either printing, writing, signs, or pictures, in order to provoke him to wrath, or expose him to public hatred, contempt, or ridicule. The direct tendency of these libels is a breach of the public peace, by stirring up the objects of them to revenge, and perhaps to bloodshed. The communication of a libel to any one person, is a publication in the eye of the law. And therefore the sending an abusive private letter to a man, is as much a libel as if it were openly printed. For it equally tends to a breach of the peace.

The punishment of such libellers, for either making, repeating, printing, or publishing the libel, is fine, and such corporal punishment as the court in their discretion shall inflict, regarding the quantity of the offence, and the quality of the offender.—4 *Bla. Com.* 150.

By acts of 1803, c. 8, it is lawful for every defendant, who shall be charged by indictment with the publication of a libel, to prove on the trial of the same, the truth of the facts alleged in the bill of indictment: and upon the introduction of testimony, if it shall appear to the satisfaction of the jury, that the facts are true, with the publication whereof the defendant stands charged, such evidence shall be deemed to be a complete justification of the charge.

LIMITATIONS.

Seven years' actual and peaceable possession of land, under a deed or other colourable title, is a perpetual bar against all persons; and twenty-one years like possession will bar the state.

If however, at the time the title accrues, the party entitled to the land, is within the age of twenty-one years, feme covert, non compos mentis, imprisoned, or beyond the seas, such person may notwithstanding the seven years be expired, commence his or her suit, or make his or her entry, within three years next after full age, discoverture, coming of sound mind, or enlargement out of prison; and persons beyond the seas within eight years after their title accrues.

All actions of account rendered, actions upon the case, actions of debt for arrearages of rent, actions of debt grounded upon any lending or contract without specialty, actions of detinue, replevin, and trespass *quare clausum fregit*, shall be brought within three years next after the cause of action, and not after; except such accounts as concern the trade of mer-

chandize, between merchant and merchant and their factors or servants; and actions of trespass, assault and battery, wounding, imprisonment, or any of them, within one year after the cause of action, and not after; and actions upon the case for words, within six months after the words spoken, and not after.

If on any of said actions, the plaintiff's judgment be reversed or arrested; or if the actions be brought by original writ, and the defendant cannot be attached or legally served with process, in all such cases the plaintiff, or his legal representatives, may commence a new action from time to time, within a year after such reversal or arrest of judgment or till the defendant can be attached, or served with process, so as to compel him to appear and answer.

If any person entitled to any such action of trespass, detinue, trover, replevin, actions of account and upon the case, action of debt for arrearages of rent, action of debt grounded upon any lending or contract without specialty, action of assault, menace, battery, wounding, and imprisonment, action of trespass *quare clausum fregit*, action upon the case for slanderous words, be, at the time any such cause of action accrue, within the age of twenty-one years, feme covert, non compos mentis, imprisoned, or beyond the seas, then such person is at liberty to bring the same actions within such times as are before limited, after his or her coming to or being of full age, discoverture, of sound mind, at large, or returned from beyond the seas, as other persons having no such impediment might have done.

The aforesaid act of limitations applies to all bills and other securities, not under seal, made transferable by acts of 1786, c. 4, after the assignment or endorsement thereof, in the same manner as it operates by law against promissory notes.

When the person against whom there is cause of action is beyond sea at the time the right of action accrues, the party having such cause of action may bring the same, within such time as is limited by the act of limitations aforesaid, after the return of the absent party.

By acts of 1814, c. 29, if an orphan coming to the age of twenty-one years, does not call on his or her guardian, within three years from thence, for a full settlement of his guardianship, the securities of such guardian shall be discharged from all liability. But nothing in this act shall extend to persons imprisoned, beyond seas, or non compos mentis.

By acts of 1808, c. 8, all actions to recover penalties under the acts of the general assembly, unless otherwise limited,

shall be brought within three years after the cause of action accrues, and not after.

By acts of 1810, c. 18, all suits on the bonds of sheriffs, clerks of the superior courts, and clerks of the courts of pleas and quarter sessions shall be brought and prosecuted within six years after the right of action accrues, and not after;—saving nevertheless the rights of infants, femes covert, and persons non compos mentis,—so that they sue within three years after their disabilities are removed.

By acts of 1789, c. 23, the creditors of any person deceased, if they reside within this state, shall within two years, and if they reside without the limits of this state, shall within three years, from the qualification of the executor or administrator, exhibit and make demand of their respective accounts, debts, and claims of every kind whatever, to such executor or administrator. And if they fail to demand and bring suit within the aforesaid limited time, they shall be forever barred. Provided, that infants, persons non compos mentis, and femes covert, may bring their several actions after the expiration of said term, but within one year after their disabilities are removed. Provided also, that if any creditor, who after making demand, shall delay to bring suit at the special request of the executor or administrator, then the said demand shall not be barred during the time of the indulgence.

And the act of 1799 revives and enforces the ninth section of the act of 1715, which declares that "creditors of any person deceased shall make their claim within seven years after the death of such debtor, otherwise such creditor shall be for ever barred."

LUNATICS—See *Idiots and Lunatics.*

MAIM.

Mayhem, or maim, is the violently depriving another of the use of such of his members as may render him the less able, in fighting, either to defend himself or to annoy his adversary.

Therefore, the cutting off, or disabling, or weakening a man's hand or finger, or striking out his eye or foretooth, or depriving him of those parts the loss of which in all animals abates their courage, are held to be mayhems.

But the cutting off his nose or ear, or the like are not held to be mayhems at common law; because they do not weaken, but only disfigure him.

Maiming at the common law is punishable by fine and imprisonment, except the offence of mayhem by castration, which all the old writers held to be felony.

By statute 5 Hen. 4, c. 5, beating, wounding, or robbing a man, and then cutting out his tongue or putting out his eyes, to prevent him from being an evidence against the offenders, is felony if done of malice prepense, that is voluntarily and of set purpose. But this is a felony within clergy.

By statute of 37 Hen. 8, c. 6, if a man shall unlawfully and maliciously cut off the ear of any citizen, he shall forfeit treble damages to the party grieved, and pay a fine of ten pounds to the public.—*Hayw.*

If any person or persons shall of malice aforethought, unlawfully cut out or disable the tongue, or put out an eye of any person, with intent to murder, maim, or disfigure, the person or persons so offending, their counsellors, abetters, and aiders, knowing of and privy to the offence as aforesaid, shall, for the first offence stand in the pillory for two hours, have both his ears nailed to the pillory and cut off, and receive thirty nine lashes on the bare back; and for the second offence shall be declared to be guilty of felony, and shall suffer as in case of felony, without benefit of clergy. But no conviction and judgment under the act shall work a forfeiture of goods and chattels, lands and tenements, or corruption of blood.

If any person or persons shall on purpose unlawfully cut or slit the nose, bite or cut off a nose or lip, bite or cut off an ear, or disable any limb or member, of any other person, with intent to murder, or to maim, or disfigure such person; in every such case the person or persons so offending, being thereof lawfully convicted, shall be imprisoned for the space of six months, and fined at the discretion of the court before whom such offence shall be tried.—*Acts* 1791, c. 8.

MAINTENANCE.

Maintenance is an officious intermeddling in a suit that no way belongs to one, by maintaining or assisting either party, with money or otherwise, to prosecute or defend it.

A man may lawfully maintain the suit of his near kinsman, servant, or poor neighbour, out of charity and compassion,

with impunity. Otherwise, the punishment by the common law is fine and imprisonment, and by statute a forfeiture of ten pounds.—4 *Bla. Com.* 134.

MANSLAUGHTER—See *Homicide.*

MARRIAGES.

Marriages, allowed by the 18th chapter of Leviticus, are allowable in this state.

If a boy under fourteen, or a girl under twelve, marries, when either comes to that age, which is the age of consent, they may disagree, and declare the marriage void.

If a husband be of years of discretion, and the wife under twelve, when she comes to years of discretion, he may disagree as well as she. So on the other hand, when the wife is of years of discretion and the husband under.

The marriage of a lunatic, not being in a lucid interval, is void.

If there be a former marriage subsisting as to either of the parties, this latter marriage is absolutely void.

No minister or justice of the peace shall join as man and wife any persons, without license first had and obtained, or thrice publication of the banns.

Any minister, clerk, or reader, granting a false certificate, shall suffer as in case of forgery at the common law.

If any minister or reader shall wittingly publish, or cause or suffer to be published, the banns of matrimony between any servants or between a free person and a servant; or if any minister or justice of the peace shall wittingly celebrate the rites of matrimony between any such, without a certificate from the master or mistress of every such servant, that it is done by their consent; he shall forfeit and pay five pounds, to the use of the master or owner of such servant; to be recovered by an action of debt, bill, plaint, or information. And every servant so married without the consent of his or her said master or mistress, shall for his or her said offence, serve his or her said master or mistress, their executors, administrators, or assigns, one whole year, after the time of service by indenture or custom is expired.

If any white man or woman, being free, shall intermarry with an Indian, negro, mustee, or mulatto man or woman, or any person of mixed blood, to the third generation, bond or free, he shall, by judgment of the county court, forfeit and pay the sum of fifty pounds, to the use of the parish.

No minister of the church of England, or other minister, or justice of the peace, or other person whatsoever, within this state, shall hereafter presume to marry a white man with an Indian, negro, mustee, or mulatto woman, or any person of mixed blood, as aforesaid, knowing them to be so, upon pain of forfeiting and paying, for every such offence, the sum of fifty pounds; to be applied as aforesaid.

All regular ministers of the gospel of every denomination, having the cure of souls, and all justices of the peace in this state, are hereby authorised and empowered to solemnize the rites of matrimony, according to the rites and ceremonies of their respective churches, and agreeably to the rules as prescribed by law. And the said ministers may demand and take for every couple by them married, if by license, the sum of twenty shillings, to their use, and no more.

The clerk of each county court is hereby authorised and empowered to grant marriage licenses to any person applying for the same, first taking bond, in the name of the governor for the time being, and his successors, with sufficient security, in the sum of 500*l.* with condition that there is no lawful cause to obstruct the marriage for which such license is desired; to be recovered by action of debt, in any court of record having cognizance thereof, by the party grieved;—which bond aforesaid shall be taken, and license granted, by the clerk of the county in which the feme resides; which license shall be directed 'to any authorised minister or justice of the peace.'

Every minster of the gospel, qualified as by law directed, or any other person appointed by their respective church as a reader, is hereby authorised and empowered to publish the banns of matrimony between any two persons requesting the same; provided that every publication shall be made three several Sundays in the congregation, immediately after or during divine worship; and shall give a certificate of such publication when demanded, directed 'to any authorised minister or justice of the peace;' and may demand and take for his service, the sum of four shillings, and no more. But the people called quakers shall still retain their former rules and privileges in solemnizing the rites of matrimony in their own church.

If any minister or justice of the peace shall knowingly join together in matrimony any two persons, in any way or manner other than by law directed, shall forfeit, and pay for every such offence the sum of fifty pounds; to be recovered by action of debt, in any court of record having cognizance thereof, one half to him that shall sue for the same, and the other half to

be applied by the court to the use of the county where such forfeiture ariseth, and be also liable to an action of damage to the party grieved. And if any clerk shall knowingly grant a marriage license, in any way or manner other than by law directed, he shall forfeit and pay for every such offence the sum of 100*l.* to be recovered and applied as other fines in this act before directed, and be also liable to an action of damage to the party grieved.

See *Polygamy*.

MARRIAGE CONTRACTS.

Marriage Contracts may be proved in the county court within six months after the making, and registered in one month after, or for want thereof, shall be void as to creditors.

MEMBERS OF ASSEMBLY.

Every member elect, who shall fail or neglect to attend at the time and place of meeting, on the first day of the session, shall forfeit five pounds, and twenty shillings for every day he may be absent from his duty during the session; which sums shall be deducted from his pay as a member, if the same be sufficient; if not, then the excess so remaining, shall be deducted from his future pay as a member of the general assembly. Provided nevertheless, that a majority of the members of either house, may remit or mitigate the said forfeitures, upon sufficient cause shown on oath.

If any person, who shall be returned by the sheriff of any county in this state as elected a member of the general assembly shall fail to attend at any session of the general assembly which he ought to attend, such person shall forfeit twenty five pounds; to be recovered in the county where he was elected, at the suit of the governor, on the certificate of such failure issued by the speaker of the house in which such delinquency happened, unless sufficient excuse be offered and proved on oath by such delinquent member at the next succeeding assembly.

The members of the general assembly shall have freedom of speech and debate in general assembly, and not be liable to impeachment or question in any court or place out of the general assembly for words spoken therein; and the members are protected from all arrest or imprisonment or attachment of

property, during the time of their going to, [illegible] attending at the general assembly, agreeably to [illegible]or of a pub- of his attendance, except for treason, felony, or br[illegible] said mill, peace. [illegible] pleas

The sheriff shall, on payment of twenty shillings, f[illegible]hich any candidate not elected, with a fair and true copy of t[illegible] polls, and a just statement of the election, within twenty days after such election, under the penalty of 100*l.* for the use of the state. Provided nevertheless, that such candidate shall make application to the sheriff for the same, within ten days after said election.

Every person elected a member of the general assembly shall, before taking his seat, take the oath of allegiance to this state, and the oath to support the constitution of the United States. And if any person so elected shall, by himself or any other person, directly or indirectly give, or cause to be given, any gift, gratuity, reward, or present whatsoever; or give or cause to be given, by himself or any other person, any treat or entertainment, of meat or drink, at any public meeting or collection of people, to any person or persons whatever, for his or their votes, or to influence him or them in his election,—every person violating this act shall, on due proof thereof, be expelled from his seat in the general assembly.

If any person or persons shall treat with meat or drink, on any day of election, or any day previous thereto, with an intent to influence the election, every person so offending shall forfeit 100*l.* one half for the use of the county where the same shall be recovered, to be paid to the county trustee, the other half to the person who shall sue for the same; to be recovered by action of debt in any court having cognizance thereof. And it is the duty of the sheriffs, in every county, annually to publish this act, by advertising and reading the same at the courthouse door, on the first and second days of the court of pleas and quarter sessions which shall happen previous to the annual election, and also on the different days of elections, under the penalty of twenty pounds for each and every neglect.

See *Election*, *State Constitution*.

MILLS.

All mills grinding for toll, are deemed public mills.

Where any person wanting to build a mill hath lands on one side of a run only, he shall petition the county court, and show who is the owner of the land on the opposite side; when

a summons shall issue to such person to appear at the next court to answer to such petition. The court shall at the same time direct four freeholders to lay off and value an acre of ground on each side of the run, and report their proceedings to the court; and if it take not houses, orchards, gardens, or other immediate conveniences, the court may grant leave to the petitioner, or proprietor of the land on the other side, to build such mill; and he shall pay costs.

The person obtaining leave, to pay down in court the valuation money, which shall be recorded, and shall be a good title to the land. No mill to be built within two miles of any mill above, or below, or so as to overflow any other mill.

Persons to begin to build mills within one year and finish the same within three years; and constantly to keep the same up. Otherwise the land to return to the first owner, unless further time be allowed by the court.

Mills belonging to any persons under age, femes covert, non compos mentis, or imprisoned, suffered to let fall, such persons shall have three years to rebuild the same, after their disability is removed.

Any person aggrieved by order of any court, may appeal to the superior court of the district, which court may grant relief.

Persons who have built mills in virtue of orders of court heretofore granted, and have paid the purchase money, quieted in their possessions.

Owners of mills injured by the building of other mills, may have their action against the party for damages.

All millers to grind according to turn, and well to grind the grain, if water will permit, and may take one-eighth part of wheat and one-sixth part of corn, in the districts of Edenton, Newbern, Wilmington, and Halifax, and one-eighth of the corn and wheat in the districts of Hillsborough and Salisbury, for grinding, and one-fourteenth part for chopping grain of any kind; on penalty of twenty-four shillings to the party injured for taking larger toll, not grinding in turn, or not grinding well; recoverable before a justice of the peace.

Owners of mills may grind their own grain at any time.

Millers are to keep in their mills the following measures, viz. a half bushel and peck, tried and stamped, and proper toll-dishes for each measure,—on penalty of five pounds to the party injured, recoverable before a justice of the peace. If the miller is a free person, and keeps the mill for hire, the owner of the mill may stop such fine out of his wages.—*Acts* 1777, c. 23.

To recover damages from the owner or proprietor of a public mill, for an injury sustained by the erection of said mill, the party injured shall apply by petition to the court of pleas and quarter sessions of the county in which the land to which damage is done is situate, setting forth in what respect he or she is injured by the erection of said mill, having first given the owner of said mill ten days' previous notice of such application; and it shall be the duty of the court thereupon to order a writ to be issued to the sheriff, commanding him to summon a jury of freeholders unconnected with the parties by consanguinity or affinity, and entirely disinterested,—no one of whom shall be the owner or part owner of any public mill,—to meet on the premises on a certain day, of which he shall give each party five days' previous notice; and the jury so summoned shall attend, and after having taken an oath (which the sheriff or his deputy is to administer) that they will well and truly enquire whether any damage hath been sustained, that they will impartially, according to the best of their judgment and ability, assess the amount which the petitioner ought annually to receive from the owner or proprietor of said mill on account thereof,—they shall proceed to view and examine the premises, and to hear all the evidence which may be produced on both sides, and shall retire to themselves and make up their verdict, as to the sum which the petitioner is entitled to receive as an annual compensation for the damage he sustains, reduce the same to writing, sign their names thereto, and deliver it to the sheriff sealed up, to be delivered to the court from whence the writ issued, at the next succeeding term; which verdict shall be binding between the parties for the term of five years (unless the damage should be increased by raising the water or otherwise, if said mills are kept up) from the filing of the petition, unless appealed from by either of them.

If the verdict be, that the petitioner hath sustained no damage, he shall pay all costs, and execution shall be issued therefor by the clerk of the court; but if in favour of the petitioner, it shall be issued against the defendant for the amount of one year's damage preceding the filing of the petition, and for all costs. And if the defendant do not annually pay up to the petitioner, his heirs or assigns, before it shall fall due, the sum assessed by said verdict as the damage to be paid annually, such petitioner, his heirs or assigns, may annually during the five years, apply to the clerk for an execution against him, at the same term the petition was filed, in

each and every year, for the amount of the last year's damage, or any part thereof which may remain unpaid.

The sheriff, for summoning each juror or witness shall be entitled to two shillings; and each juror shall be entitled to eight shillings per day for attending on the premises, and four pence per mile for travelling to and from the place of trial; an account of which they shall render on oath to the sheriff after making up their verdict, to be returned therewith to court;—and the clerk shall receive the same fees as in other cases of petition where no copy is issued.

The right of appeal is given to both parties. But if the plaintiff appeal and recover no higher damages in the superior court than were awarded by the jury on the premises, he shall pay all the costs of his appeal.

In all cases where the jury shall assess the yearly damage as high as ten pounds, the party injured, his heirs or assigns, may sue as has heretofore been usual in such cases. And the verdict of the jury on the premises, shall then be binding only for one year's damage preceding the filing of the petition. *Acts* 1809, c. 15.

The owners of lands which shall be overflowed by reason of the erection of mills for domestic manufactures, or other useful purposes, shall have the same remedy against the persons erecting such mills or the owners thereof, as is given in the aforesaid act against owners of public mills.

In all cases arising under the said act, where either party shall appeal from the county to the superior court, the trial in the superior court shall be had at bar.

The venire issued under the said act to the sheriff, shall command him to summon twenty-four jurors, from whom twelve shall be drawn to form the jury. And each party may challenge either peremptorily or for cause, as in other civil cases.

See *Inspection*.

MISDEMEANORS.

Misdemeanors are all such offences, under the degree of felony, which have or have not a particular name assigned to them; and which are punishable by fine or imprisonment, or both.

MISPRISION OF FELONY.

Misprision of Felony is the concealment of any felony which a man knows but never assented to. For if he assented, this makes him either principal or accessory. The punishment for this in a public officer, is by statute, imprisonment for a year and a day; in a common person, fine and imprisonment at the discretion of the court.

The harbouring a person commonly reputed to be a felon, has often been indicted in our superior courts, and the party fined and imprisoned.—*Hayw.*

MISPRISION OF TREASON—See *Treason.*

MITTIMUS—See *Commitment.*

MURDER—See *Homicide.*

MUTE.

A person is said to stand mute, when, being arraigned for treason or felony, he either makes no answer at all, or answers foreign to the purpose, or with such matter as is not allowable; or upon having pleaded 'not guilty,' refuses to put himself upon the country. In high treason or petit larceny, and in all misdemeanors, this amounts to a conviction, and the court will give judgment accordingly. But in petit treason and other felonies he shall not be looked upon as convicted so as to receive judgment for the felony, but should at the common law have received judgment of penance,—that is, if he be found obstinately mute. But the court, before pronouncing this judgment, if he says nothing, should empannel a jury to enquire whether he stands obstinately mute, or whether he be dumb by the visitation of God. If the latter appears to be the case, the judges of the court shall proceed to the trial, and examine all points as if he had pleaded 'not guilty.' But it is to be doubted whether judgment of death can be given against such a prisoner, who hath never pleaded, and can say nothing in arrest of judgment.

Before this judgment is pronounced, the prisoner should be admonished three times, and also shall have a convenient respite of a few hours, and the sentence should be distinctly read to him that he may know his danger, and if his offence

public nuisance to her neighbourhood; for which, if convicted, she shall be placed on the cucking stool or ducking stool, and be plunged in the water.

The master or head of the family is liable if any of his family lay or cast any thing out of his house into the street or common highway, to the damage of any individual, or to the common nuisance of the citizens; for he hath the superintendance and charge of all his household.

OATHS.

The judges, justices of the peace, and other persons, who are or shall be empowered to administer oaths, shall (except in the cases by law excepted) require the party to be sworn to lay his hand upon the holy evangelists of Almighty God, in token of his engagement to speak the truth, as he hopes to be saved in the way and method of salvation pointed out in that blessed volume; and in further token that if he should swerve from the truth, he may justly be deprived of all the blessings of the gospel, and made liable to that vengeance which he has imprecated on his head: and after repeating the words, 'So help me, God,' shall kiss the holy gospels, as a seal of confirmation to the said engagements.

In all cases when any judges, justices of the peace, or other persons, are or shall be empowered to administer any manner of oath in this state, and the person to be sworn shall be conscientiously scrupulous of taking a book oath in manner aforesaid, and pray the benefit of the act in that case made and provided, it shall be lawful for all such judges, justices, and other persons, and they and each of them are hereby required to excuse such person from laying hands upon or touching the holy gospels; and the said judges, justices, and others, are hereby directed in such case to administer the oath required, in the following manner, to wit, the party so conscientiously scrupulous, and praying the benefit of the act in that case made and provided, shall stand with his right hand lifted up towards heaven, in token of his solemn appeal to the Supreme God, whose dwelling is in the highest heavens; and also in token, that if he should swerve from the truth, he would draw down the vengeance of heaven upon his head, and shall introduce the intended oath with these words, viz *I, A B, do appeal to God, as a witness of the truth and avenger of falsehood, as I shall answer the same at the great day of judgment, when the secrets of all hearts shall be known,* that,

&c. as the words of the oath may be. And it is declared, that an oath thus administered and taken, with the right hand lifted up, is and shall be a lawful oath in this state. And such oath shall be admitted and used in all courts in this state where the same shall be required as aforesaid, and shall be equally good and valid in law, to all intents and purposes, as if the same oath had been taken by the party having laid his hand upon and kissed the holy gospels.

The solemn affirmation of Quakers, Moravians, and Menonists, made in the manner heretofore used and accustomed, shall be admitted as evidence in civil controversies in this state. And where other persons are required to take an oath or oaths to the state, the said Quakers, Moravians, and Menonists shall make their solemn affirmations in the words of the said oath or oaths, beginning after the word 'swear,' or shall make such affirmations as shall be provided for them by law.

Oath of a Judge.

I, A B, do solemnly swear, that I will well and truly serve the state of North-Carolina in the office of judge of the superior courts of law and equity of this state. I will do equal law and right to all persons, rich and poor, without having regard to any person. I will not wittingly or willingly take, by myself or any other person, any fee, gift, gratuity, or reward whatsoever for any matter or thing by me to be done by virtue of my office, except the fees and salary by law appointed. I will not maintain, by myself or any other, privately or openly, any plea or quarrel depending in any of the said courts. I will not delay any person of common right, by reason of any letter or command from any person or persons in authority to me directed, or for any other cause whatsoever; and in case any letters or orders come to me contrary to law, I will proceed to enforce the law, such letters or orders notwithstanding. I will not give my voice for the appointment of any person to be clerk of any of said courts, but such of the candidates as appear to me to be sufficiently qualified for that office. And in all such appointments, I will nominate, without reward, the hope of reward, prejudice, favour, or partiality, or any other sinister motive whatsoever. And finally, in all things belonging to my office, during my continuance therein, I will faithfully, truly, and justly, according to the best of my skill and judgment, do equal and impartial justice to the public and to individuals. So help me, God!

Oath of a Justice of the Peace.

I, A B, do solemnly swear, that as a justice of the peace, and a justice of the county court of pleas and quarter sessions in the county of , in all articles in the commission to me directed, I will do equal right to the poor and to the rich, to the best of my judgment, and according to the laws of the state. I will not privately or openly, by myself or any other person, be of counsel in any quarrel or suit depending before me; and I will hold the county court and quarter sessions of my county as the statutes in that case may and shall direct. The fines and amercements

that shall happen to be made, and the forfeitures that shall be incurred, I will cause to be duly entered, without concealment. I will not wittingly or willingly take by myself, or by any other person for me, any fee, gift, gratuity, or reward whatsoever, for any matter or thing by me to be done by virtue of my office, except such fees as are or may be directed and limited by statute; but well and truly I will do my office of a justice of the peace, as well within the county court of pleas and quarter sessions as without. I will not delay any person of common right, by reason of any letter or order from any person or persons in authority to me directed, or for any other cause whatever. And if any letter or order come to me contrary to law, I will proceed to enforce the law, snch letter or order notwithstanding. I will not direct or cause to be directed, any warrant by me to be made to the parties; but will direct all such warrants to the sheriff or constables of the county, or other the officers or ministers of the state, or other indifferent persons, to do execution thereof. And finally, in all things belonging to my office, during my continuance therein, I will faithfully, truly, and justly, according to the best of my skill and judgment, do equal and impartial justice to the public and to individuals. So help me, God!

Oath of the Public Treasurer.

I swear that, according to the best of my abilities and judgment, I will execute impartially the office of Public Treasurer in all things, according to the true intent and meaning of the act for the more regular collecting payment of, and accounting for the public taxes. And that I will not, directly nor indirectly, be concerned in carrying on trade and merchandize of any kind whatsoever, or apply the public money to any other use than by law directed. So help me, God!

Oath of the Comptroller.

I, A B, do swear that I will well and truly execute the trust reposed in me as comptroller, without favour or partiality, according to law, to the best of my knowledge and understanding. So help me, God!

Oath of the Secretary of State.

I, A B, do solemnly swear that I will in all cases faithfully and honestly execute the office of secretary of state for the state of North-Carolina, during my continuance in office, according to law. So help me, God!

Oath of a Sheriff.

I, A B, do solemnly swear, that I will execute the office of sheriff of county, to the best of my knowledge and ability, agreeably to law. And that I will not take, accept, or receive, directly or indirectly, any fee, gift, bribe, gratuity, or reward whatsoever, for returning any man to serve as a juror, or for making any false return on any process to me directed. And I also swear, that I have not given any fee, gift, gratuity, or reward, or other thing whatsoever, to any person or persons for his or their vote or interest to procure me to be nominated to the said office. Nor will I hereafter give to any person or persons such fee,

gift, gratuity, or reward, for having procured, or contributed to procure me to be nominated thereto. So help me, God!

Oath of a Constable.

You shall swear, that you will well and truly serve the state, in the office of constable. You shall see and cause the state's peace to be well and duly preserved and kept, according to your power. You shall arrest all such persons as, in your sight, shall ride or go armed offensively, or shall commit or make any riot, affray, or other breach of the state's peace. You shall do your best endeavor, upon complaint to you made, to apprehend all felons and rioters, or persons riotously assembled. And if any such offenders shall make resistance, with force, you shall make hue and cry, and shall pursue them according to law. You shall faithfully, and without delay, execute and return all lawful precepts to you directed. You shall well and duly, according to your knowledge, power, and ability, do and execute all other things belonging to the office of a constable, so long as you shall continue in this office. So help you, God!

Oath of a Giver-in of Taxable Property.

You, , do swear [or affirm, as the case may be] that this list by you delivered, contains a just and true account of all the property for which by law you are subject to pay taxes, to the best of your knowledge and belief. So help you, God!

Oath of a Valuer of Strays.

You shall swear that you will well and truly view and appraise the stray or strays [as the case may be] in the summons to you directed, without favour or partiality, according to your skill and ability. So help you, God!

Oath of a Tobacco Inspector.

You shall swear, that you will carefully and diligently view and examine all tobacco brought to any public warehouse whereof you are appointed to be inspector, and all other tobacco which you shall be called upon to inspect; and that not separate and apart from your fellow, but in his presence. And that you will not receive any tobacco that is not in your judgment sound, well conditioned, merchantable, and clear of trash. Nor receive, pass, or stamp any hogshead or cask of tobacco, prohibited by an act of assembly entitled "An Act regulating the Inspection of Tobacco and preventing Frauds." And that you will not change, alter, or give out any tobacco, other than such hogshead or cask for which the receipt to be taken in was given; but that you will in all things well and faithfully discharge your duty in the office of an inspector, according to the directions of the said act, without fear, favour, affection, malice, or partiality. So help you, God!

Oath of an Inspector of Flour.

You shall swear that you will, without favour, affection, malice, or partiality, inspect all flour brought to you, and which you shall be required to examine. That no flour shall be passed or branded by you without your inspecting the same. That you will not brand or cause to be branded as passed, any cask or casks of flour, that do not appear to you, to the best of your skill and judgment, to be sufficiently clean, well ground, sweet, and merchantable. That you will mark on all casks of flour the degree thereof, according to the directions of the act of assembly in that case made and provided. That you will carefully examine the casks in which flour brought for inspection shall be contained. And that you will not pass or brand any such casks, unless they be of size, goodness, and thickness, as by law required. So help you, God!

Oath of an Inspector of other Articles than Tobacco and Flour.

I, A B, do swear that I will faithfully, impartially, and diligently execute the office of inspector. That I will not for favour, affection, prejudice, or partiality, brand for any person whatsoever, any barrel of beef, pork, rice, tar, pitch or turpentine, fish, butter, or flax seed, or pass any staves or heading, lumber or shingles, other than such as are declared lawful by act of assembly, entitled "An Act to prevent the Exportation of unmerchantable Commodities," according to the best of my skill and judgment. So help me, God!

Oath to be taken by a Jury for Laying off a Road.

I, A B, do solemnly swear, that I will lay out the road now directed to be laid out by the court of pleas and quarter sessions, to the greatest ease and advantage of the inhabitants, and with as little prejudice to enclosures as may be, without favour or affection, malice or hatred, and to the best of my skill and knowledge. So help me, God!

Oath of a Tobacco Picker.

I, A B, do solemnly swear or affirm [as the case may be] that I will faithfully pick all tobacco which may be put into my possession for that purpose, without fraud or damage to the owner. So help me, God!

Oath of a Processioner.

I, A B, do solemnly swear or affirm [as the case may be] that I will well and truly execute the duty and trust enjoined by the acts for processioning lands in this state, according to the best of my skill and ability, without favour or partialty to any person or persons whatsoever. So help me, God!

Oath of an Attorney.

I, A B, do swear, that I will truly and honestly demean myself in the practice of an attorney, according to the best of my knowledge and ability. So help me, God!

Oath of a Clerk of the Superior Court of Law.

I, A B, do swear, that by myself, or any other person, I neither have given, nor will give to any person or persons whatsoever, any gratuity, gift, fee, or reward, in consideration of my appointment to the office of clerk of the , nor have I sold nor offered to sell, nor will I sell or offer to sell my interest in the said office. I also solemnly swear, that I do not, directly or indirectly, hold any other lucrative office in this state. And I do further swear, that I will execute the office of clerk of the , for the county of , without prejudice, favour, affection, or partiality, to the best of my skill and ability. So help me, God!

Clerks of the courts of pleas and quarter sessions and clerks and masters in equity are also required to take the above oath, with a suitable variation as to the style of the latter.

Oath of Allegiance to be taken by Private Persons.

I, A B, do swear that I will be faithful and bear true allegiance to the state of North-Carolina; and I will truly endeavour to support, maintain, and defend the independent government thereof, against all powers and persons who, by secret arts or open force shall endeavor to subvert the same; and will in every respect conduct myself as a peaceable orderly citizen. And that I will disclose and make known to the legislature, or some person or persons in civil authority, all treasons, conspiracies, or attempts, committed or intended against the said state, which shall come to my knowledge. So help me, God!

The Affirmation of Allegiance to be taken by Private Persons, being Quakers, Menonists, Moravians, and Dunkards.

I, A B, do selemnly and sincerely declare and affirm, that I will pay obedience to the independent state of North-Carolina, and to the powers and authorities which are or may be established for the good government thereof. And that I will disclose and make known to the legislature, or to some person or persons in civil authority, all treasons, conspiracies, or atttempts, committed or intended against the state, which shall come to my knowledge. So help me, God!

Oath of Allegiance to be taken by Members of the General Assembly and by Persons appointed to Offices.

I, A B, do solemnly and sincerely swear or affirm, that I will be faithful and bear true allegiance to the state of North-Carolina, and to the constitutional powers and authorities which are established for the government thereof. And that I will endeavour to support, maintain, and defend the constitution of the said state, not inconsistent with the constitution of the United States, to the best of my knowledge and ability. So help me, God!

The Affirmation of Allegiance to be taken by Persons appointed to Offices.

I, A B, do solemnly and sincerely declare and affirm, that I will truly and faithfully demean myself as a peaceable citizen of the state of North Carolina. That I will be subject to the powers and authorities that are or may be established for the good government thereof, not inconsistent with the constitution of the said state, and the constitution of the United States, either by yielding an active or passive obedience thereto. That I will not abet or join the enemies of this state by any means, in any conspiracy whatever against the said state. And that I will disclose and make known to the legislative, executive, or judicial powers of the state, all treasonable conspiracies which I shall know to be made or intended against the said state.

Oath of Allegiance to the United States.

I, A B, do solemnly swear or affirm [as the case may be] that I will support the constitution of the United States.

Oath of the Foreman of a Grand Jury.

A. B.——You, as foreman of this grand inquest for the body of this county of , shall diligently inquire and true presentment make, of all such matters and things as shall be given you in charge, The state's counsel, your fellows', and your own, you shall keep secret. You shall present no one for envy, hatred, or malice; neither shall you leave any one unpresented for fear, favour, or affection, or hope of reward; but you shall present all things truly as they come to your knowledge, according to the best of your understanding. So help you, God!

Oath of the rest of the Grand Jury.

The same oath which your foreman hath taken on his part, you, and every of you, shall well and truly observe and keep on your part. So help you, God!

Oath of the Constable to attend the Grand Jury.

You swear that you will faithfully carry all papers sent from the court to the grand jury, or from the grand jury to the court, without alteration or erasement. So help you, God!

Oath of a Petit Jury on an Indictment for a Capital Offence.

You shall well and truly try, and true deliverance make, between the state and the prisoner at the bar, whom you shall have in charge, and a true verdict give according to your evidence. So help you, God!

Oath of a Petit Jury on an Indictment for an Offence not capital.

You and each of you swear, that you will well and truly try this issue of traverse between the state and A B, and a true verdict give according to your evidence. So help you, God!

Oath of a Petit Jury in Civil Causes.

The Original Panel thus.——"You and each of you swear that you will well and truly try all civil causes which shall come before you this term, and true verdicts give according to the evidence thereon. So help you, God!"

The same oath to talesmen, by using the word 'day' instead of 'term.'

Oath of a Constable charged with a Jury.

You shall swear, that you will keep every person sworn of this jury together, in some private and convenient place, without meat, drink, (water excepted) fire, or candle. You shall not suffer any person to speak to them, neither shall you speak to them yourself, unless it be to ask them whether they are agreed in their verdict, but with leave of the court. So help you, God!

Oath of Witnesses to be sent to the Grand Jury.

The evidence you shall give to the grand jury upon this bill of indictment against A B, shall be the truth, the whole truth, and nothing but the truth. So help you, God!

Oath of a Witness on a State Trial.

The evidence you shall give to the court and jury sworn, between the state and prisoner at the bar, shall be the truth, the whole truth, and nothing but the truth. So help you, God!

Oath of a Witness upon a Traverse.

The evidence you shall give to the court and jury sworn, touching the issue of this traverse between the state and A B, shall be the truth, the whole truth, and nothing but the truth. So help you, God!

Oath of a Witness in Civil Causes.

The evidence you shall give to the court and jury in this cause now on trial wherein A B is plaintiff and C D defendant, shall be the truth, the whole truth, and nothing but the truth. So help you, God!

Quakers' affirmation in all cases runs thus—

I, A B, do solemnly and sincerely declare and affirm, that, &c.

The oath of those who swear with uplifted hands, runs thus—

I, A B, do appeal to God, as a witness of the truth and avenger of falsehood, as I shall answer for the same at the great day of judgment, when the secrets of all hearts shall be made known, that, &c.

Oath of a Standard Keeper.

You shall swear, that you will not stamp, seal, or give any certificate, for any steelyards, weights, or measures, but such as shall, as near as possible, agree with the standard in your keeping. And that you will in all respects truly and faithfully discharge and execute the power and trust by law reposed in you as a standard keeper, to the best of your ability and capacity. So help you, God!

Oath of an Insolvent Debtor not worth Forty Shillings.

I, A B, do swear that I have not the worth of forty shillings, sterling money, in any worldly substance, either in debts owing to me or otherwise howsoever, over and besides my wearing apparel, working tools, arms of muster, one bed and its necessary furniture, one wheel and cards, and one loom. And that I have not at any time since my imprisonment or before, directly or indirectly sold, assigned, or otherwise disposed of or made over in trust for myself or otherwise, any part of my real or personal estate, whereby to have or expect any benefit to myself, or to defraud any of my creditors to whom I am indebted. So help me, God!

For the Oath of an Insolvent Debtor delivering a Schedule, see *Insolvent Debtors, ante.*

Oath of a Patrol.

I, A B. do swear, that I will as seamher for guns, swords, and other weapons, among the slaves in my district, faithfully, and as privately as I can, discharge the trust reposed in me as the law directs, to the best of my power. So help me, God!

Oath of a Witness to prove a Will.

A B,—You swear that you saw C D sign, seal, publish, and declare this writing to be and contain his last will and testament. That at the time thereof was of sound, disposing mind and memory. And that did it freely, without compulsion, to the best of your knowledge. So help you, God!

Oath of an Executor.

A B—You swear that you believe this writing to be and contain the last will and testament of C D, deceased; and that you will well and truly execute the same, by first paying his debts, and then his legacies, as far as the said estate shall extend or the law shall charge you; and that you will well and faithfully execute the office of an executor, agreeably to the trust and confidence reposed in you and agreeably to law. So help you, God!

Oath of an Administrator.

A B—You swear that you believe C D died without leaving any last will and testament. That you will well and truly administer all and singular the goods and chattels, rights and credits of the said C D, and a true and perfect inventory thereof return into this court within ninety days from this time. And that you will well and truly execute the office of administrator agreeably to law. So help you, God!

ORDINARIES.

All persons hereafter retailing liquors, shall sell the same by sealed measures, or such measures as shall at least contain the full quantity pretended to be sold.

Any person who, after being suspended and disabled from keeping ordinary according to the direction of an act in that case made and provided, shall sell or retail liquors until he or she shall obtain another license for such purpose, shall be liable to the same penalties as if a license had never been obtained by him or her.

Every ordinary keeper who shall ask, demand, or receive a greater price for any drink, diet, lodging, fodder, provender, corn, or pasturage; or any ferry keeper who shall ask, demand, or receive a greater price for ferriage than shall be rated by the justices according to the directions of the act in that case made and provided, shall forfeit fifty pounds for every offence; to be recovered by the informer to his own use, before any jurisdiction having cognizance thereof.

Any person by applying to the court of the county in which such person dwells, and praying a license to keep an ordinary, may, at the discretion of such court, be ordered to have a license for the purpose aforesaid, unless it shall appear to the said court that the person so applying is a person of gross immorality, or of such poor circumstances and slender credit, that they think him or her not able to comply with the intention of the act in that case made and provided. And on grant-

ing such license, the person who applies for the same shall produce one or more securities to the said court to be by them approved, who shall before the license is made out, join with him or her in a bond of the following tenor, to wit:

Know all men by these presents, that we, A B and C D, are held and firmly bound to , governor of the state of North-Carolina, in the sum of one hundred pounds current money of the state, to be paid to the said or his successors in office. To which payment, well and truly to be made, we bind ourselves and every of us, our and every of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the day of

The condition of the above obligation is such, that whereas the above bounden A B hath obtained a license to keep an ordinary at , if therefore the said A B doth constantly find and provide in his or her said ordinary good and wholesome diet and lodging for travellers, and stable, fodder, corn, and pasturage for their horses, for and during the term of one year from the day of , then this obligation to be void, otherwise to remain in full force.

In case of breach of or not complying with the condition of the said bond, it shall and may be lawful for any person in the name of the governor, to sue for and recover the penalty of the said bond, and apply one half thereof to his or her own use, and the other half to the use of the state.

When such bond shall have been given, the clerk of the court shall prepare a license and sign the same, which license shall continue in force one year and no longer. And the said clerk shall receive the sum of eight shillings for his own use, in full for his fees and furnishing a copy of the tavern rates. And every person obtaining such license shall pay to the sheriff of his or her county, at the time of paying public taxes, a further sum of forty shillings, for the use of the state.

If any ordinary keeper shall entertain servants or slaves against the will of their owners, or common sailors against the direction of the masters of vessels to which they belong, every ordinary keeper so offending, shall and may by order of the justice before whom such offence shall be proved, be from thenceforth suspended and disabled from keeping an ordinary, as if he or she had never obtained a license for that purpose; and shall be further subject to a fine of five pounds, to the use of the party suing for the same; to be recovered before any justice of the peace, subject nevertheless to an appeal to court as in cases of other warrants, by either party who may think themselves aggrieved by the determination of such justice.

The justices of each county shall once a year or oftener if necessary, at the first court to be held after the first day of January in each year, rate the prices of liquor, diet, lodging, fodder, corn, provender, and pasturage to be taken by ordinary keepers in their respective counties. And every ordinary keeper shall, within thirty days after such rates are settled, cause the same to be set up in the common entertaining room of such ordinary, and there kept until the rates are again altered. And on failing so to do, shall forfeit and pay the sum of twenty pounds to the use of the county wherein such offence may happen; to be recovered before any justice of the peace of the said county, subject nevertheless to an appeal as other warrants.

No ordinary keeper shall sell or credit liquors to any person to a greater amount than five pounds, unless the person so credited sign a book or note in the presence of one or more witnesses in acknowledgement of the said debt, under the penalty of losing the money so credited. And in any action brought for recovery of such debt, the general issue may be pleaded and the act in that case made and provided given in evidence. But nothing in the act contained shall be construed, deemed, or taken to prohibit or restrain any person to sell by retail brandy or other distilled spirits, the production of his own farm, by the quart or greater quantity.

Every person who intends to retail spirituous liquors without applying to the court for a license to keep an ordinary house of entertainment, agreeably to the directions of the act in that case made and provided, shall annually at the time of giving in his or her list of taxable property, signify the same to the justice of the peace authorised to take such list; whose duty it shall be to report the same to the clerk of the court, designating the same. And all persons signifying that he or she intends to retail spirituous liquors by the small measure as aforesaid, shall pay the sheriff of the county wherein he or she resides, the sum of forty-eight shillings for the use of the state, for one year.

Any person obtaining liberty to retail spirituous liquors as aforesaid, and shall sell to slaves without a permit from his or her owner, or shall keep a disorderly house, he or she so offending, on conviction thereof before any justice of the peace, shall forfeit and pay the sum of five pounds for each and every offence; to be recovered before a justice of the peace, one half to the use of the person suing for the same, and the other half to the use of the county where such offence was committed.

Any person undertaking to sell spirituous liquors by the small measure, or by any other ways or means where the quantity is less than a quart, and receive pay for the same, not having a license or listed himself as aforesaid, shall on conviction thereof forfeit and pay forty-eight shillings for the use of the state; to be recovered before a justice of the peace, and be further liable to presentment or indictment for the same offence.

ORPHANS.

It shall not be lawful for any house keeper to harbour and conceal, or hire any orphan child or children, without first obtaining leave of some justice of the peace, under the penalty of five pounds. And such justice on granting permission, shall compel the person requiring the same, to bring the said orphan child to the next county court; which is required to bind such orphan children agreeably to law.

The above fine shall be one half to the informer, the other half to the poor of the county.

The county court, where any guardian appointed by the deed or will of a parent may reside, may upon complaint to them made of such guardian abusing the trust reposed in him, by misusing the child or children so committed to his tuition as aforesaid, in being about or intending to marry such child or children in disparagement, neglecting the care of their education suitable to their estate, or wasting, converting to his own use, or otherwise mismanaging such estate, to make and establish from time to time such rules and orders for placing such child or children under the care and tuition of any other person or persons, securing the estate, and for the better education and usage of such child or children as they, in their discretion, shall judge meet and necessary.

The superior and the county courts, within their respective jurisdictions, have, and shall have full power and authority, from time to time, to take cognizance of all matters concerning orphans and their estates, and to appoint guardians in such cases where to them it shall appear necessary; and shall take good security of all guardians by them to be appointed for the estate of the orphans by them committed. And if any court shall commit an orphan's estate to the charge or guardianship of any person or persons without taking good and sufficient security for the same, the justice or justices appointing such guardian, shall be liable for all loss and damages sus-

tained by the orphan for want of such security being taken; to be recovered by action at the common law, in any court of record in which the same is cognizable, at the suit of the party grieved.

Where the securities were good at the time of their being taken or accepted, but afterwards become insolvent, in such case the justice or justices shall not be liable.

The bond to be given by any person or persons appointed guardian as aforesaid, shall be made payable to the justice or justices present in court and granting such guardianship, the survivors or survivor of them, their executors or administrators, in trust, for the benefit of the child or children committed to the tuition and care of such guardian; which bond such court shall cause to be acknowledged before them and recorded. And that in the name of the justice or justices to whom the said bond is made payable, the survivors or survivor of them, their executors or administrators, any person or persons injured, may and shall, at his, her, or their costs and charges, commence and prosecute a suit against such guardian and his securities, executors or administrators; and shall and may recover all damages which he, she, or they may have sustained by reason of the breach of the condition thereof.

If any verdict or judgment shall pass for such guardian or his securities, the person at whose instance such suit shall be commenced or prosecuted, shall pay costs.

When a guardian shall be appointed to an orphan by any superior or county court, such guardian shall, at the next court after his appointment, exhibit an account, upon oath, of all the estate of such orphan, which he or she shall have received into his or her hands or possession. And every guardian heretofore or hereafter to be by any such court appointed, shall annually exhibit his account and state of the profits and disbursements of the estate of such orphan upon oath; and such account to be exhibited, shall be entered by the clerk in particular books to be provided and kept for that purpose only. And when the said courts shall know or be informed that any guardian or guardians by them respectively appointed, do waste or convert the money or estate of any orphan to his or their own use, or do in any manner mismanage the same, is about, or intends to marry him or her in disparagement, or neglects to educate or maintain any orphan according to his or her degree and circumstances; or where any such guardian or his securities are likely to become insolvent; such court shall have power, from time to time, to make and establish such rules and orders for the better ordering, managing, and

securing such estate, and for the better education of and maintaining such orphans, or to appoint another guardian, as they shall think fit and convenient.

Every guardian as soon as conveniently the same may be done, shall, by order of the superior or county court of pleas and quarter sessions, cause the sheriff to sell and dispose of all the goods and chattels of his or her ward as are or may be liable to perish, consume, or be the worse by using or keeping (except in the instances hereafter mentioned) for the most that can be got for the same, by public sale, having first advertised the same at all public places within the county at least twenty days before the day of sale, in reasonable lots; and shall, for enhancing the price thereof, give six months' credit, upon good security given. For which service the sheriff shall be allowed by the court, so as such allowance does not exceed two and a half per cent. And such guardian, after the time of such payment is past, shall take and pursue all lawful ways and means to receive and recover the money, upon pain of being answerable for the same; and if the same cannot be received before the orphan entitled to receive such money shall have a right to demand it, or such guardian shall be removed from his guardianship, he or she shall and may assign such bond to such orphan; and such assignment shall discharge such guardian for so much against him, her, or them. And where the profits of any orphan's estate shall be more than sufficient to maintain and educate him or her, the guardian of such orphan shall lend the surplus and all other sums of money in his hands belonging to such orphan, upon bond, with good and sufficient securities, to be approved of by the next succeeding court, and to be repaid with interest; which interest such guardian shall account for annually. And where the person or persons to whom such money shall be lent, or their securities, are likely to become insolvent, such guardian shall use all lawful means to enforce the payment thereof, on pain of being liable for the same as aforesaid. And an assignment of such last mentioned bond, in either of the afore mentioned cases, shall discharge such guardian for so much as is specified in the condition thereof.

Where any orphan shall have lands, and a sufficient number of slaves to cultivate and improve the same, such slaves, unless otherwise ordered by the superior or county courts, shall be employed on the lands and plantations of such orphan. And all horses, cattle, sheep, or hogs shall be kept upon such lands and plantations until such orphan is of age. And he

or she shall have the benefit of the increase, and shall sustain the loss if any shall happen.

If any such stock grow too numerous, or if it will be to the advantage of such orphan, his or her guardian shall and may sell, by order of the superior or county court, such part of such stock as such court shall think fit. And all plate shall be preserved and delivered to such orphan when at age, in kind, according to weight and quantity.

No guardian shall let or farm out any land belonging to any orphan for a longer term than the orphan be of age, or in other manner than by lease in writing; and that special care be had that the tenant shall improve the plantation; and that he or she keep the house, orchards, and fences thereon, or that shall be erected on the same, in good and sufficient repair, and leave the same so at the expiration of such lease. And that provision be made in such lease against all kinds of waste, and employing any timber to any other use than the immediate use of the plantation.

The justices of every county court of pleas and quarter sessions in this state, respectively, shall on the first day of the court that shall be held next after the first day of January in every year, hold an orphan's court for the purpose aforesaid; and every person heretofore appointed, or that shall hereafter be appointed, guardian to any orphan by any court, or by deed or will as aforesaid, shall exhibit such account as aforesaid. And the justices of every court shall, at the same court, examine into all accounts of guardians so to be exhibited to them, and shall direct a summons to issue, returnable to their next court, against all guardians who shall then fail to appear and render such account, whether such guardian be resident in the same or any other county, and shall then also enquire into the abuses and mismanagement of guardians,—and whether they, or their securities, are likely to become insolvent, and thereupon to proceed according to the power given by law. And if any such guardian shall wilfully neglect, after being summoned as aforesaid, to appear, or obstinately refuse to exhibit such account, it shall and may be lawful for the court to issue an attachment for such contempt, and commit such guardian until he or she shall exhibit such account.

Nothing however before contained, shall be construed to restrain the power of the county courts of pleas and quarter sessions, in enquiring, as often as they shall think proper, into the abuses and misnanagement of guardians; but that it

shall be lawful for them to execute such power at any time or times when to them it shall appear necessary.

The grand jury of every county in this state shall, annually, at the orphans' court to be holden for their counties respectively, be charged with, and present to the justices thereof, in writing, the names of all orphan children within their county that they shall know have not guardians appointed them, and are not bound out to some trade or employment; and all abuses, mismanagements, and neglect of such guardians as live within their county.

It shall and may be lawful for every guardian to charge in his account all reasonable disbursements and expenses.—And if upon rendering such account, it shall appear to the court that such guardian hath, really and bona fide, disbursed, more in one year than the profits of the orphan's estate do amount to, for the education and maintenance of such orphan, such guardian shall be allowed and paid for the same out of the profits of such orphan's estate in any other year. But such disbursements must be in the opinion of the court, suitable to the degree and circumstances of the estate of such orphan.

Where any person who now is, or hereafter shall be, security for the estate of any orphan, shall conceive himself in danger by reason thereof, and petition the court where such security was entered into, for relief, it shall be lawful for such court, upon petition to them exhibited, forthwith to order summons to issue against the party or parties with and for whom the petitioner stands bound, returnable to the next court; and thereupon to compel such party or parties to give sufficient other or counter securities, to be approved by the said court, or to deliver up the said estate to the said petitioner, or such other person as the court shall direct; or they may make such other order or rule therein for the relief of the petitioner, and better securing such orphan's estate, as to them shall appear just and equitable.

Such court shall take good and sufficient security of the person or persons to whom such estate shall be so committed, in like manner, and under like penalty, as is by the act required to be taken of guardians appointed by the court. And every such person shall also exhibit his account, and be subject to the rules and orders of the court, in the same manner to all intents and purposes, as is required of guardians, or they are made subject unto.

When any person shall conceive himself injured or aggrieved by order or sentence of any county court, in appointing a

guardian to any orphan, or in removing any orphan from the care and tuition of any person who has been appointed such, or on refusing to make such appointment or removal as aforesaid, he may appeal from such order or sentence to the court of equity, or to the superior court of law in the county, at his option. And the party praying such appeal, shall file a copy of the proceedings of the county court therein, with the clerk and master in equity, or clerk of the superior court (as the case may be), fifteen days before the sitting of such court; and thereupon it shall and may be lawful for the court to which such appeal is made, to proceed to rehear the matter, and either affirm or reverse such order or sentence, and thereupon to award execution for all such costs and charges as shall be occasioned by such appeal.

The party praying such appeal before the same shall be granted by the county court, shall enter into bond, with sufficient security, for prosecuting such appeal with effect, and the payment of all such costs and charges as shall be awarded against him in case he shall be cast in his said appeal.

Where the wife of any person is secured in property she may afterwards acquire, her children born since the marriage of the parties and not remaining with their father, shall be considered as orphan children, and shall be bound out by the court of pleas and quarter sessions, or, at the discretion of said court, continued with their mother.

When the county court shall bind any orphan or baseborn child of colour, they are required to take bond with sufficient security, in the sum of 250*l.* from the master or mistress, that he or she shall not remove such child out of the county, and to produce him or her before the court, at any time when the court may require it, and also to produce such person at the expiration at the time of service. And on failure thereof, the chairman of the court shall bring suit on said bond for the benefit of said apprentice.

The superior and county courts shall and may appoint a fit and proper person to take the care and management of the estates, real and personal, rights and credits, of any person under the age of twenty-one years, who shall be seised or possessed of any estate, or entitled thereto, although the father of such minor shall be living. And the person so appointed shall enter into bond with security, as required in other cases of guardianship, and shall have the same authority and be governed by the same laws as other guardians; but shall not have any care of, or authority over the person of such minor, by virtue of such appointment.

The renting and hiring out of all houses, lands, and slaves of any minor, shall be done by public auction; and guardians are required to advertise the same in three or more public places in the county, at least ten days previous thereto. And no such auction shall commence before eleven o'clock in the morning, or after four o'clock in the afternoon of the day appointed, under the penalty of 100*l.*

If any orphan shall not, within three years after he attains the age of twenty-one years, call on his guardian for a full settlement of his guardianship, the securities of such guardian shall be discharged;—saving however the rights of such as may be imprisoned, beyond seas, or non compos mentis,

See *Limitation. Lands. Executors and Administrators.*

OVERSEERS OF THE POOR—See *Poor.*

OVERSEERS OF ROADS.

The county courts shall annually appoint overseers of the highways or roads; who are by the act obliged to summon all male taxables from the age of sixteen to fifty (except such persons as are or shall be exempt from public services by the assembly) within their district, to meet at such places and times as to them shall seem convenient, for the repairing or making such roads as shall be necessary; and except such as are or have been heretofore by law excused from appearing at musters, and such as send three slaves, or other three sufficient hands, to work on the public roads. And whosoever shall upon such summons refuse or neglect to do and perform their duty therein, shall forfeit and pay the sum of five shillings per day for each person so neglecting or refusing; to be recovered by a warrant from any justice of the county, and paid by the sheriff or constable to the overseer, and by him to be expended in hiring other hands to work on said roads.

Any person refusing to serve as overseer on any road agreeably to the order of the county court in which he resides, shall forfeit and pay the sum of twenty pounds, to be recovered and applied as other fines and forfeitures directed by the law in that case made and provided. But no person shall be compelled to serve as overseer of a road in any county more than one year in three, nor shall overseers of slaves be exempt from working on roads.

The overseer shall give notice to each free person, or the master, mistress, or overseer of slaves, what kind of tools they and each of them shall bring and work with on the roads, at the time of summoning.

The several persons summoned by the overseers to work on the roads as aforesaid, shall not be liable to any fine for not appearing and doing their duty, unless they shall be so summoned three days before the day appointed for working.

It shall and may be lawful for an overseer, if required by the majority of the workmen on the road assigned him, to lay off the road in equal apartments, for the ease of the labourers, who shall finish his or their parts in a time agreed on between him and each free person, master, mistress, or overseer; and on default of any agreeing party, the overseer is authorised to cause such part to be finished by hire of other persons to do the same, and, thereon to tender his account and demand payment, and on refusal, to warrant for the same, and to recover the money to his own use. Provided the time agreed upon shall not exceed ten days.

All overseers of roads shall cause to be set up at the forks of all roads within their several districts, a post or posts, with arms pointing the way of each and every road, with directions to the most public places to which they lead, with the number of miles from that place as near as can be computed; and every overseer who shall neglect or refuse to do and keep the same in repair, shall forfeit and pay for every such neglect the sum of five pounds; to be recovered before any justice of the peace, and applied as other fines are by the law directed. And every person or persons who shall wantonly remove, knock down, or deface the said arms, shall for every such offence forfeit and pay the sum of five pounds.

The several overseers of the roads shall cause the public roads within their districts respectively, to be exactly measured, where the same has not already been done, and shall at the end of each mile, mark in a legible and durable manner, the number of such miles;—beginning, continuing, and marking the numbers, in such manner and form as the courts of the counties shall severally and respectively direct; and each overseer shall keep up and repair such marks and numbers within his district. And every overseer neglecting or refusing to mile mark, or to repair the mile marks within his district, according to the intent and meaning of the act of assembly, for the space of thirty days after their appointment to office, shall forfeit and pay the sum of forty shillings; to be recovered by a warrant before any justice of the peace.

All overseers of roads who shall refuse or neglect to do their duty as is by law directed, or who shall not keep the roads and bridges clear in repair, or let them remain uncleared or out of repair for and during the space of fifteen days, unless hindered by extreme bad weather, such overseer shall forfeit for every such offence the sum of forty shillings, over and above such damage as may be sustained; to be recovered by a warrant from any justice of the peace, by any person taking out the same, and to be applied to his own use.

The overseers of the several roads within this state, are authorised to cut poles and other necessary timber to enable them to comply with the duties enjoined on them in repairing and making bridges and causeways, without incurring any penalty thereby.—*Acts* 1784, c. 14.

Any person appointed overseer of a road in any county in this state, shall be deemed and held liable for any neglect in working on the road, until he shall have made return to the court of his county, and shall make it appear to their satisfaction that he has done the duties of an overseer by law directed.

All offences committed against the foregoing act shall be prosecuted by indictment.—*Acts* 1786, c. 18.

But no overseer of any public road shall be subject to any indictment for neglecting to set up sign-posts at the forks of roads as aforesaid unless he shall fail to set up the same for the space of fifteen days.—*Acts* 1812, c. 24.

It shall be the duty of each sheriff to apply at the clerk's office, by himself or some other proper person, within ten days after the rise of each court, for the orders of court appointing overseers of roads, rivers, and creeks, and shall, on receiving them, within twenty days, serve each person so appointed, with one copy of said orders, or leave the same at his usual habitation, and the other copy he shall return to the next county court happening thereafter, with the date of the service endorsed thereon, or the date when it was left at the residence of said overseer. And every clerk or sheriff failing to perform his duty herein, shall on conviction pay the sum of five pounds, to be applied as other similar fines.—*Acts* 1813, c. 15.

PARDON.

The power of granting pardons and reprieves, is vested by the constitution in the governor, except where the prosecution is carried on by the general assembly, or the law shall other-

wise direct. And in these cases, he can in the recess of the assembly, grant a reprieve until the next sitting of the general assembly.

He cannot however pardon a common nuisance while it remains unredressed, or so as to prevent an abatement of it. Neither can he pardon an offence against a popular or penal statute or act of assembly, after information brought.

Any suppression of truth, or suggestion of falsehood, in a charter of pardon, will vitiate the whole;—for the governor was misinformed. A pardon of all felonies will not pardon a conviction or attainder of felony; but the conviction or attainder must be particularly mentioned. And a pardon of felonies will not include piracy. But under these and a few other restrictions, it is a general rule that a pardon shall be taken most beneficially for the citizen.

A pardon may be upon condition, either precedent or subsequent, on the performance whereof the validity of the pardon will depend.

A pardon by act of assembly need not be pleaded, but the court must take notice of it; and the offender cannot lose the benefit thereof by his negligence, as he may of the governor's pardon. The latter must be specially pleaded at a proper time. For if a man is indicted and has his pardon, and pleads the general issue, he has waived the benefit of his pardon. But if he avails himself th reof as soon as by course of law he may, a pardon may be either pleaded upon arraignment, or in arrest of judgment, or in bar of execution.

The effect of a pardon by the governor is to acquit the offender of all corporal penalties and forfeitures annexed to that offence for which he obtains pardon, and to give him a new credit and capacity.

An offence cannot be pardoned before it is committed.—Nor can a pardon release a recognizance for keeping the peace.—*Hayw.*

PARTITION.

The judges of the superior courts of law and equity, and the justices of the courts of pleas and quarter sessions, are required and empowered, on petition of one or more persons claiming the real estate of any intestate, to appoint five commissioners to divide and appropriate the same or so much thereof as shall be prayed for, and the court shall judge proper and requisite according to law. In all cases where the real estate

lies in different counties within this state, such petition shall be exhibited in the superior court where such real estate or part of it lies; and where the estate lies in one county only, the petition for a division shall be to the county court of such county, and no other way. The said commissioners or a majority of them, being first sworn to do justice among the claimants according to the best of their skill and abilities, are empowered to charge the more valuable dividend or dividends, with such sum or sums as they shall judge necessary, to be paid to the dividend or dividends of inferior value, in order to make an equitable division; which sum or sums so charged, shall be paid to the owner or owners of the dividend or dividends of inferior value.

And the said commissioners or a majority of them, are further required, as soon as they can, to make a return of their proceedings and appropriations, under their hands and seals, ascertaining with precision the different tracts or parcels of lands, lots, or houses, with actual surveys of the same when necessary, to the court by which they were appointed; which return and appropriation shall be certified by the clerk and enrolled in his office, and registered in the office where such lands, lots, or houses respectively lie; and such return and appropriation shall be binding and valid in, among, and between the claimants, their heirs, and assigns, forever.

The said commissioners for their trouble and services, may take and demand whatever the court by which they may be appointed shall judge adequate to the trouble they may have been at, and for the expenses incurred either to surveyors or otherwise; the said expenses to be paid in equal proportions by the claimants. And if said charges are not paid on return of their proceedings and service, execution shall and may issue against the petitioner or petitioners in the same manner as for the attendance of witnesses.

Where real estates now are or hereafter may be held by two or more persons as tenants in common, they shall and may have the same liberty and privilege of having their said estates divided, as is provided by the act for dividing the estate of intestates; and the divisions when made, shall be good and effectual in law to bind the parties, their heirs, and assigns.

Whenever any court shall, on any petition being filed and commissioners appointed, order the sheriff of the county where the commissioners live to summon said commissioners to appear on the premises, for the purposes which may be set forth in said order, it shall be his duty to summon the same;

and when they or a majority of them shall have met, the sheriff or some justice of the peace shall administer the oath prescribed by the act in that case made and provided, before they proceed to execute the purposes for which they shall have been appointed.

The commissioners, in the division of the real estates of intestates shall divide the lands into equal shares in point of value as nearly as possible, by a subdivision of the more valuable tract or tracts; and if an equal division cannot be made without injury to the heirs, and some of them are obliged to be charged with the payment of sums of money to the dividend or dividends of inferior value, such sums of money shall not be payable until the minor shall arrive at the age of twenty one.

The sums so due from the more valuable dividends, shall bear an interest of six per cent per annum until paid. Provided always, that the guardians of such debtor minors, shall be at liberty, and are required to pay such sums, whenever assets shall come into their hands sufficient to discharge the same. And if such guardians shall fail to pay the sums due, when they have assets, they shall be answerable out of their own estate for the interest which shall accrue in consequence of such failure.

In all cases where a tenant in common of a piece, tract, or lot of land, shall be absent out of the state, it shall be lawful for his co-tenant, desirous of having said land divided, to give notice of such his intention, under an order of the court in which the petition shall be filed, for six weeks successively, by advertisement at the courthouse, or three different places in the county, and in the state gazette; and on proof thereof, the court shall proceed as if a copy of the petition and summons had been personally served.

PATROLS.

The several courts of pleas and quarter sessions within this state, shall have full power and lawful authority, to direct, in such manner and in such numbers, and under such rules, regulations, and restrictions, under which the patrols in their respective counties shall be appointed and governed; and the said patrols when appointed, shall be subject to such rules, regulations, and restrictions as their respective county courts shall ordain and establish, and under such fines and penalties as the said court shall fix and direct.

As a compensation for the services required of patrols as such, they shall be exempt from serving on juries, working on roads, and from the payment of all parish and county taxes to the amount of forty shillings; and in addition to the fees hitherto allowed by law, the patrols shall be entitled to receive the one half of the penalties recovered under the act in that case made and provided, (1794, c. 4,) in the district in which such patrols may respectively act and reside, except such penalties as may be incurred by hiring to negroes their own time.

The patrols in each district, or a majority of those present, shall have power to inflict a punishment not exceeding fifteen lashes, on all slaves they may find off their owners plantation, or travelling on the Sabbath, or other unreasonable time, without proper permit or pass.

The several courts of pleas and quarter sessions, if they shall deem it necessary, shall have full power and authority, from time to time, to lay a tax not exceeding one shilling on every taxable black poll within their respective counties, for the purpose of paying the patrols by them appointed. Provided always, that there shall be a majority of the acting justices present when such tax is laid as aforesaid.

PENALTIES—See *Limitation. Debt and Debtor. Slaves.*

PERJURY.

Perjury is when a lawful oath is administered, in some judicial proceeding to a person who swears wilfully, absolutely, and falsely, in a matter material to the issue or point in question.

The law takes no notice of any perjury but such as is committed in some court of justice, having power to administer an oath; or before some magistrate or proper officer invested with a similar authority, in some proceeding relative to a civil suit or a criminal prosecution; for it esteems all other oaths unnecessary at least, and therefore will not punish the breach of them. For which reason, it is much to be questioned, how far any magistrate is justifiable in taking a voluntary affidavit in any extrajudicial matter, as is now too frequent upon every petty occasion; since it is more than possible, that by such idle oaths a man may frequently in a court of conscience incur the guilt, and at the same time evade the temporal penalties of perjury.

The perjury must be also wilful, positive, and absolute; not upon surprise, or the like. It must also be upon some point material to the question in dispute; for if it be only in some trifling collateral circumstance to which no regard is paid, it is no more penal than in the voluntary extrajudicial oaths before mentioned.

Subornation of perjury, is the offence of procuring another to take such a false oath as constitutes perjury in the principal. *4 Bla. Com.* 139.

The punishment at the common law is fine and imprisonment. But by act of assembly, if the offender be prosecuted thereon, it is more severe. For thereby it is enacted—

"That if any person shall wilfully and corruptly commit perjury, on his or her oath or affirmation, in any suit, controversy, matter, or cause depending in any of the courts of this state, or on any oath or affirmation made, or in any deposition or affidavit taken pursuant to the laws of this state, every such person so offending, and being thereof convicted, shall be fined not exceeding the sum of 500*l.* and shall stand in the pillory for one hour, at the expiration of which time both the ears of the person so offending shall be cut off, and severed entirely from the head. And the ears so cut off, shall be nailed to the pillory by the officer, and there remain until the sitting of the sun. And the person so offending, shall be thereafter rendered incapable of giving testimony in any of the courts of this state, or in any case whatsoever, until such time as the judgment so given against the said offender shall be reversed.

"That if any person shall by any means, procure another person to commit corrupt and wilful perjury, on his or her oath or affirmation, in any suit, controversy, matter, or cause depending in any of the courts of this state, or any oath or affirmation made, or in any affidavit or deposition taken pursuant to the laws of this state, the person so offending, and being thereof convicted, shall stand in the pillory one hour, have his or her right ear cut off, and shall be fined at the discretion of the court, in a sum not exceeding 500*l.* And the person so offending shall be thereafter rendered incapable of giving testimony in any of the courts of this state, or in any case whatsoever until such time as the judgment so given against the said offender shall be reversed.

"That in every presentment or indictment to be prosecuted against any person for wilful and corrupt perjury, it shall be sufficient to set forth the substance of the offence charged upon the defendant, and by what court, or before whom the oath or

affirmation was taken, (averring such court, or person or persons to have a competent authority to administer the same) together with the proper averment or averments to falsify the matter or matters wherein the perjury or perjuries is or are assigned, without setting forth the bill, answer, information, indictment, declaration, or any part of any record or proceedings, either in law or equity, other than aforesaid; and without setting forth the commission or authority of the court, or person or persons before whom the perjury was committed.

"That in every presentment or indictment for subornation of perjury, or for corrupt bargaining or contracting with others to commit wilful and corrupt perjury, it shall be sufficient to set forth the substance of the offence charged upon the defendant, without setting forth the bill, answer, information, indictment, declaration, or any part of any record or proceedings, either in law or equity; and without setting forth the commission or authority of the court or person or persons before whom the perjury was committed, or was agreed or promised to be committed.

"That when the judges or justices of any of the courts within this state shall be fully convinced that any person hath committed, or procured any person to commit wilful and corrupt perjury, either as a witness, or in any affidavit or deposition to procure a certiorari, injunction, or other process, or in any case wherein such oath or affirmation has been made, or the affidavit or deposition has been taken in pursuance of the laws of this state, it shall be the duty of such justices, judge, or judges, to cause the person so offending to enter into recognizance for his appearance as in other criminal cases; and they shall direct the counsel acting for the state to take the necessary legal measures to support such prosecution, and the supreme executive officer of the state for the time being may be entered as a prosecutor. But the judge or judges who directed such prosecution, shall not sit on the trial thereof."

PERSONATING BAIL.

If any person shall acknowledge, or procure to be acknowledged, any bail, in the name of any other not privy to the same, he shall be guilty of felony without benefit of clergy. But this extends only to proceedings in the courts.

If bail be put in, in feigned names, the parties may be indicted, and set in the pillory.—*Stra.* 384.

And if the above offence should be committed out of court, before any officer empowered to take bail, it would be a high misdemeanor punishable upon indictment, by fine and imprisonment.

PETTY LARCENY—See *Larceny.*

PHYSICIANS.

Every person practising as a physician or surgeon, shall deliver his account or bill of particulars to all and every patient, in plain English words, or as nearly so as the articles will admit. All and every one of which accounts shall be liable, whenever the patient, his or her executors or administrators shall require, to be taxed by the court and jury of the court of pleas and quarter sessions of the county where the party complaining resides, calling to their aid and assistance such testimony as they may think proper.

See *Jurors. Quarantine.*

PICKPOCKET—See *Larceny.*

PIRACY.

Piracy is a felonious offence against the United States.

If any person shall commit upon the high seas or in any river, haven, bason, or bay, out of the jurisdiction of any particular state, murder, or robbery, or any other offence, which, if committed in the body of a county, would by the laws of the United States be punishable with death; or if any captain or mariner of any vessel shall piratically and feloniously run away with such vessel, or any goods or merchandize to the value of fifty dollars, or yield up such vessel voluntarily to any pirate; or if any seaman shall lay violent hands upon his commander, thereby to prevent his fighting in defence of his vessel, or goods committed to his trust, or shall make a revolt in the vessel; such person shall be deemed a pirate and a felon, and on conviction shall suffer death.

If any citizen shall commit any piracy or robbery aforesaid or any act of hostility against the United States or any citizen thereof, upon the high seas, under colour of any commission from any foreign prince or state, or under pretence of any authority from any person, such offender shall, notwithstanding

the pretence of any such authority, be deemed a pirate, felon, and robber, and on conviction suffer death accordingly.

Accessories to piracy before the fact shall suffer as the principal, and accessories after, shall be imprisoned not exceeding three years, and fined not exceeding five hundred dollars.

If any seaman or other person shall commit manslaughter upon the high seas, or confederate, or attempt, or endeavour to corrupt any commander, master, officer, or mariner to yield up or to run away with a vessel, or with any goods, wares, or merchandize, or to turn pirate, or to go over to or confederate with pirates, or in any wise trade with any pirate, knowing him to be such, or shall furnish such pirate with any ammunition, stores, or provisions of any kind, or shall fit out any vessel knowingly and with a design to trade with or supply or correspond with any pirate or robber on the seas; or if any person shall any way consult, combine, confederate, or correspond with any such pirate or robber on the seas, knowing him to be guilty of any such piracy or robbery; or if any seamen shall confine the master of any vessel, or endeavour to make a revolt in such vessel; such person so offending, and being thereof convicted, shall be imprisoned not exceeding $ 1,000.—*Acts of Congress* 1790.

POISON—See *Homicide*.

POLYGAMY.

Polygamy is the having a plurality of wives at once.

If any person now married, or who hereafter shall be married, doth take to him or herself another husband or wife, while his or her former wife or husband is still alive, every such offence shall be felony, and the person so offending shall suffer death as in cases of felony. But the act made in that case shall not extend to any person or persons whose husband or wife shall continually remain beyond sea for the space of seven years together, nor to any person or persons whose husband or wife shall absent him or herself in any other manner for the space of seven years together, such person or persons not knowing his or her said husband or wife to be living within that time.

And the act shall not extend to any person or persons who are, or shall be at the time of such after-marriage, divorced according to the mode established, or which shall be established by law, nor to any person or persons whose former marri-

age is by law declared to be void and of no effect, nor to any person or persons for or by reason of any former marriage had or made within the age of consent.—*Acts* 1790, c. 14.

If any person now married, or who hereafter shall be married, doth take to him or herself another husband or wife, while his or her former wife or husband is still living, every such offender shall be a felon without benefit of clergy, and shall suffer death.—*Acts* 1809, c. 26.

POOR.

If the sheriff shall fail to summon each and every warden in his county to attend on the day of election of wardens, or to appoint and advertise a day of meeting according to law, he forfeits ten pounds (equal to four pounds) for the latter omission, and five pounds (equal to two pounds) for the former; recoverable with costs before any jurisdiction having cognizance thereof.

The wardens of the poor, or a majority, at their first meeting, shall appoint two county wardens out of their body; and if the persons so elected refuse, they shall pay twenty pounds (equal to eight pounds); recoverable as aforesaid.

If any sheriff or constable shall fail to execute a summons from any three wardens of the poor, calling a meeting of the wardens, he shall pay forty shillings (equal to sixteen shillings) for every warden he fails to summon; recoverable as aforesaid. And every warden so summoned, and refusing or neglecting to attend, shall forfeit forty shillings (equal to sixteen shillings) unless he show sufficient cause to the succeeding meeting; recoverable as aforesaid.

Any tax gatherer neglecting or refusing to account for and pay the taxes wherewith he is chargeable, levied for the use of the poor, after deducting his commissions, the county court at or before the expiration of his office, on motion of the wardens may give judgment and award execution for all the money wherewith he is chargeable, with costs.

The aforesaid penalties to be one half to the informer, the other to the county wardens for the use of the poor.

The sheriff failing to advertise the election of wardens, at least ten days before the election, at the courthouse and other public places, forfeits twenty pounds (equal to eight pounds); recoverable by action of debt;—one half to the prosecutor, the other to the county wardens for the use of the poor.

No person shall be accounted an inhabitant, so as to have gained a legal settlement in any parish, until such person shall have been actually resident in such county one whole year.

Upon complaint made by the county wardens of any county, before a justice of the peace, that any poor person or persons are come into their county, and likely to become chargeable thereto, it shall be lawful for such justice, by warrant under his hand, to cause such poor persons to be removed to the county where he or she was legally last settled. But if such poor person be sick or disabled, and cannot be removed without danger of life, the county wardens shall provide for his or her maintenance and cure at the charge of the parish, and after recovery, shall cause him or her to be so removed. And the county wherein he or she was last legally settled, shall repay all charges occasioned by the sickness, maintenance, and cure of such person; and also all charges and expenses, if such person shall die before removal. And if the county wardens of the county to which such poor person belongs, shall refuse to receive and provide for the person or persons removed by warrant as aforesaid, every county warden so refusing shall forfeit and pay twenty pounds,—one half to the use of the county from whence the removal was, and the other half to informer. And if the wardens of the county where such poor person was legally settled shall refuse to pay and satisfy all the charges and expenses aforesaid, in such case, the wardens of the county refusing, shall be liable for the same; to be recovered with costs.

And if any housekeeper shall entertain such poor person, and shall not give notice thereof to the county wardens of the county, or one of them, within one month, he or she so offending shall forfeit and pay the sum of five pounds; to be recovered with costs, by the county wardens, for the use of the county.—*Acts* 1777, c. 7, § 23.

All persons duly elected wardens of the poor, and on notice from the sheriff refusing to qualify, shall forfeit and pay the sum of ten pounds specie, to the use of the county.

The wardens of the poor for the several counties in this state, are empowered to lay a tax annually, on the inhabitants of their respective counties, not exceeding one shilling on every poll, and five cents on every hundred dollars' valuation of land with their improvements, and one shilling on every hundred pounds' value of town property, in addition to the taxes which the said wardens have been heretofore empowered to

lay for the support of the poor. And the taxes to be raised in pursuance of this act, shall be collected, accounted for, and applied in the manner heretofore prescribed by law. And the said wardens are likewise empowered, when to them, or at least two thirds of them in each county, it shall seem necessary, to erect proper buildings in their respective counties, for the reception, residence, and employment of the poor.

In all cases where the time of service of the last appointed wardens shall be expired, and the county court deem a new election necessary, it shall be lawful, and they are required to order an election for wardens; which the sheriff of the county shall obey, and hold under the same rules, regulations, and restrictions as are by law prescribed for the regular elections.

Persons being distracted or otherwise deprived of their senses, so that the wardens shall judge them incapable of self preservation, shall be under the care of said wardens, who are empowered to keep them confined in such houses and so long as they may judge necessary.

The wardens of the poor shall, every year, at the next court of pleas and quarter sessions of their respective counties after the first day of June, publish and set up in the courthouse, an account of the monies by them received by taxes or otherwise, for the purpose of supporting the poor, with the use and application they may have made of the same, particularly specifying the expense of each pauper, with an account of the claims or debts unpaid, if any, and to whom due, under the penalty of 100*l.* to be recovered in the name of the chairman of the county court, to the use of the county. And the attorney acting in behalf of the state is required to institute suit for the same.

Those who have been wardens of the poor, shall call upon, settle with, and pay over to their successors, all monies remaining in their hands unappropriated, under the penalty of fifty pounds, each person, to be recovered by an action of the present wardens, on motion to the court of pleas and quarter sessions of their county, first giving said delinquent wardens ten days' notice of their intention to make such motion.

POSSE COMITATUS.

Posse Comitatus is the power of the county, consisting of all male persons therein, whether freemen or servants, above the age of fifteen years, and able to travel.—*Lamb.* 309.

But clergymen, and sick, lame, or impotent persons, are excepted.

Every justice of the peace, upon just cause, may raise this power, of such a number as in his discretion shall appear necessary, and may likewise direct in what manner they shall be armed. The persons whose assistance he shall require or command in the name of the state, must obey, upon pain of fine and imprisonment.

One justice may take the power of his county to suppress rioters, without staying for the coming of another justice, or the sheriff.

So likewise in forcible entry or detainer, and force found either upon the justice's own view, or by inquisition taken before him.—14 *Hen.* 7, c. 8.

And also to pursue and apprehend traitors, murderers, robbers, and other felons; all breakers or disturbers of the peace, and all persons against whom surety of the peace shall be granted.—*Dalt.* 454.

The sheriff or under sheriff may, by the common law, take the power of his county to execute any lawful writs or process. *West.* 1, 17. and *W.* 3, 39.

So he may to execute a justice's precept or warrant to him directed.

And without any writ or precept, the sheriff, by virtue of his office, as conservator of the peace, may raise the power of his county to preserve the peace, if broken in his view or presence, and to apprehend the breakers, and all rioters, traitors, and felons.—*Dalt.* 454.

A constable may take the aid of his neighbours, or other persons present, to apprehend a felon, or one who has dangerously hurt another.

As also to execute a justice's warrant, or to keep the peace, if broken or disturbed in his presence, and to apprehend the offenders, and carry them before a justice.

By the common law, every judge of record, sheriff, coroner, constable, or other officer, to whose office belongs the conservation of the peace, may command and take the aid and force of others to pacify riots or affrays, and to arrest all such who in their presence, and within their jurisdiction, shall endeavour to break the peace, by word or deed.—28 *Edw.* 3, c. 8.

PRESENTMENT.

Presentment is the notice taken by a grand jury of any offence from their own knowledge or observation, without any bill of indictment laid before them in behalf of the state.

When a presentment shall be made of any offence by the grand jury, upon the knowledge of one or more of their body, the name or names of such grand juror or jurors giving information, shall be endorsed on the presentment. And when any presentment or information shall be made by a grand jury of any offence, upon the testimony of a witness called upon by the grand jury to give testimony, the name of such witness shall likewise be endorsed thereon.

No person shall be arrested or charged before any court on a presentment made by a grand jury, before the attorney acting for the state, shall prepare a bill, and such bill found by the grand jury to be a true bill.

PRINCIPAL.

A man may be principal in an offence in two degrees.

A principal in the first degree is he that is the actor or absolute perpetrator of the crime.

And a principal in the second degree is he who is present, aiding, and abetting the fact to be done. Which presence need not always be an actual immediate standing by, within sight or hearing of the fact. But there may be also a constructive presence. As when one commits a robbery or murder, and another keeps watch or guard at some convenient distance.

This rule hath also other exceptions. For in case of murder by poisoning, a man may be a principal felon by preparing and laying the poison, or giving it to another (who is ignorant of its poisonous quality) for that purpose, and yet not administer it himself, nor be present when the very deed of poisoning is committed. And the same reasoning will hold with regard to other murders committed in the absence of the murderer, by means which he had prepared beforehand, and which probably could not fail of their mischievous effects. As by laying a trap or pitfall for another, whereby he is killed; letting out a wild beast to do mischief; or exciting a madman to commit murder, so that death thereupon ensues. In every of these cases the offender is guilty of murder as a

principal in the first degree. For he cannot be called an accessory, *that* necessarily presupposing a principal. And the poison, the pitfall, the beast, or the madman, cannot be held principals, being only the instruments of death. As, therefore, he must be certainly guilty either as principal or accessory, and cannot be so as accessory, it follows that he must be guilty as principal. And if principal, then in the first degree. For there is no other criminal; much less, a superior in the guilt, whom he could aid, abet, or assist.

PRISON AND PRISONERS.

There shall be kept and maintained in good and sufficient repair, in each and every county in this state, a courthouse and common jail. The whole expense of building whereof, when there shall be occasion, as well as repairing such as are already built, shall be defrayed by the county wherein the same are situated. And the courts of the several counties respectively, are invested with full power and authority, to lay and collect taxes from year to year, as long as may be necessary, for the purpose of building, repairing, and furnishing their several courthouses and jails in such manner as they shall think proper; and from time to time to order and establish such rules and regulations for the preservation of the courthouses, and for the government and management of the prisons, as may be conducive to the interest of the public, and the security and comfort of the persons confined.

The duty of the treasurer of public buildings shall be, to superintend the public buildings, and from time to time to report the state and condition thereof; to recommend alterations, repairs, or improvements, together with the sums requisite for carrying such alterations, repairs, or improvements into effect; to call to account and settle with all former commissioners, who may have received county monies for such purposes; to hear the complaints of persons confined respecting their diet and treatment; to examine into the conduct and character of the jailor, and make information thereof to the court or grand jury of the county, as circumstances may require; to apply for and obtain from the clerk, all papers and documents properly attested, which may be necessary for the collection of the taxes laid by the court; to see that the same be collected, accounted for, and applied according to the intentions and provisions of the law. And said treasurer shall hold his office during good behaviour; and as a compensation

for all his services, shall be entitled to retain a sum not exceeding five per centum of the monies which may pass through his hands.

When it shall be necessary to lay taxes in any county in this state for the purposes aforesaid, it shall be the duty of the court, upon the nomination of the treasurer of the public buildings, to appoint one or more collectors to collect the taxes of that year; which collectors, having entered into bond with sureties satisfactory to the treasurer and court, for the faithful collection and accounting for the same, shall be invested with the same powers, subject to the same penalties and restrictions, and entitled to the same compensation that sheriffs are authorised by law to receive for collecting and accounting for the public taxes. And in case any collector appointed in pursuance of the act in that case made and provided, shall fail, neglect, or refuse to account for the monies wherewith he may be chargeable when thereto required, it shall be lawful for the court, on motion of the treasurer, to give judgment against such delinquent collector and his securities, for the amount remaining due and unpaid, with costs; and thereupon to grant execution and levy the same accordingly.

When the treasurer of the public buildings of any county, shall in his report to the court of such county, recommend alterations, repairs, or improvements to the courthouse or jail, and the court being satisfied of the utility thereof, it shall be lawful for such court, after having previously estimated the expense, to appoint one or more commissioners, in conjunction with their treasurer, to contract for carrying the same into effect, but such contract being concluded, the power of the commissioners shall cease; and the monies payable thereon shall be advanced from time to time by the treasurer, who is declared to be responsible and accountable to the court, as well for the sufficiency of the work as the disbursements of the money. And the treasurer shall at least once in every year, and oftener if thereto required by the court, exhibit a fair account of his receipts and expenditures, setting forth the monies received, and at what time; the sums expended, to whom, for what use, and at what time. A complete transcript of which account shall be posted up in the courthouse for public inspection. And if the treasurer shall fail, refuse, or neglect to exhibit the same, he shall be liable to be sued upon his bond, and also to such fine in addition thereto, as the court may think proper to impose, not exceeding fifty pounds. But in the appointments of the treasurer and commissioners directed by the act in that case made and provided, there shall be pre-

sent a majority of the acting justices in the counties respectively.

It shall be the duty of the jailor to confine those committed to his custody, in the apartments provided and designated for persons of the description of which the prisoner may be; and in case a jailor shall wantonly or unnecessarily confine prisoners committed to his keeping, otherwise than by law is directed, it shall be a misdemeanor in office, and upon conviction he shall be fined at the discretion of the court trying the same.

The jails of the several counties in this state shall be provided with at least three separate comfortable apartments; one for the confinement of debtors, one for the confinement of criminals, and one other for the confinement of negroes.

All prisoners committed to any jail in this state shall be permitted to purchase and send for necessaries, in addition to the diet furnished by the jailor, as they may think proper; and to provide their own bedding, linen, and clothing, without their being obliged to pay any perquisite to the jailor for such indulgence. And if the keeper of a public jail shall do or cause to be done any wrong or injury to the prisoners committed to his custody, contrary to the intentions of the act in that case made and provided, he shall not only pay treble damages to the person injured, but such fine, not exceeding twenty pounds for each offence, in addition thereto, as the court of the county where the prisoner is confined, shall think fit to impose.

All and every person or persons who shall hereafter be committed to a public jail by lawful authority, for any criminal offence or misdemeanor against this state, shall bear all reasonable charges for carrying and guarding them to the said jail, and also for their support therein until lawfully released. And all the estate which such persons possessed at the time of committing the offence, shall be subject to the payment of the aforesaid charges, and other prison fees, in preference to all other debts or demands. And in case there be no visible estate whereon to levy such fees and charges, the amount shall be paid, except for the guards, out of the state treasury, upon the best evidence which the nature of the case will admit of, and according to such uniform rules as shall be establised by the treasurer and comptroller for that purpose.

Whenever the sheriff of the county wherein any jail is situated, or the person keeping such jail, shall be apprehensive that there is danger of the prisoners escaping, either through the insufficiency of the jail or other cause, it shall be his duty,

without delay to make information thereof to a judge of the superior court, the attorney general or solicitor general, if either of those officers be in the county, and if not in the county, to three justices of the peace; who are authorised, upon consideration of the circumstances and information received, if they deem it advisable, to furnish the said sheriff or keeper of the jail, with an order in writing, addressed to the commanding officer of the county, setting forth the danger, and requiring him forthwith to furnish such guard as may appear to be suitable for the occasion. For which service, the persons ordered out shall receive the same compensation that is or may be provided by law for the militia when called into actual service for the defence of the state; and on application to the treasury for the same, the letter to the commanding officer on which the guard was ordered out, the certificate of such commanding officer, countersigned by the sheriff or jailor, together with the deposition of the officer of the guard, setting forth the time of service, and that it was faithfully performed, shall be sufficient to authorise the treasurer to pay the same; for which he shall be allowed in the settlement of his accounts.

When there is no jail in any county, it shall be as lawful for a justice of the peace or county court to commit the offender to the jail of another county, as it would be for him or them to commit such offender to their own county jail; and the jailor of such other county is required to pay due respect to the commitment.

The justices of each county shall and may, from time to time, and at all times hereafter employ persons to keep and maintain the stocks already built, and such as are to be built, or to rebuild such as have fallen into decay or ruin, and the same to keep in good repair, by laying a poll tax on the inhabitants of their respective counties.

And for the preservation of the health of such persons as shall at any time hereafter be committed to the county prisons, the court shall have power to mark out such a parcel of land as they shall think fit, not exceeding six acres, adjoining to the prison, for the rules thereof; and every prisoner not committed for treason or felony, giving good security to the sheriff of the county to keep within the said rules, shall have liberty to walk therein, out of the prison, for the preservation of his or their health. And every prisoner giving such security as aforesaid, and keeping continually within the said rules, shall be, and is hereby adjudged and declared to be, in law, a true prisoner. And that every person therewith concerned may

w the true bounds of the said rules; the same shall be re-
ded in the county records, and the marks thereof shall
m time to time be renewed, as occasion shall require.
All bonds given for prison bounds, by persons committed
der writs of *capias ad satisfaciendum*, shall by the sheriff
king them, be assigned to the parties at whose instance such
rsons were committed to jail, and shall be returned to the
erk's office whence such execution issued, and shall have the
rce of a judgment. And if any person obtaining the rules of
prison upon giving such bond, shall escape out of the same
before he shall have paid the debt and costs, according to the
condition of his bond, it shall be lawful for the court where
such bond is lodged, upon motion of the party for whom such
execution issued, to award execution against such person and
his securities, for the debt or damages and costs, with interest
to be computed from the time of escape till payment. And
no person who shall be committed to jail on such latter execu-
tion, shall be allowed the rules of prison, but shall be kept in
close jail, until the execution shall be satisfied. But such
obligor shall have ten days' previous notice of such motion in
writing. And the obligors in such case shall not be permitted
to plead *non est factum* in their defence, unless they shall by
affidavit prove the truth of such plea.

When prisoners are delivered to any keeper of a jail in this state, by the authority of the United States, such keeper is commanded to receive such prisoners and commit them, under the like penalties as for neglect or refusal to commit state prisoners.

PROCESS.

Wherever a statute or act of assembly empowers a justice or justices, out of court, to enquire, hear, and determine, or to examine into an offence, and to bail or commit the offenders, or to convict for offences, and to give judgment for a penalty, they may graht their warrant to compel the party's appearance, and all other process, without which they cannot do completely that which is enjoined them.—*Hayw.*

PROPHECIES.

False and pretended prophecies, as they raise enthusiastic jealousies in the people, and terrify them with imaginary fears, are punished by statute with a fine of 100*l.* and one year's

imprisonment for the first offence; and for the second a forfeiture of all goods and chattels, and imprisonment during life.

PROCESSIONERS—See *Lands*.

PUBLIC WORSHIP.

If any congregation of Christians, assembled for the purpose of divine worship, be interrupted in their decent and quiet devotion, the offender may be indicted, and thereupon fined and imprisoned. Also he may be bound to his good behaviour, by any justice to whom complaint shall be made. 3 *Burr.* 1684.

And so are all offences notoriously and grossly against public decency and good manners.—*Burr.* 1438.

The statutory provisions on this subject are, that no person who is settled at or near to any church or meeting-house yard in this state, shall sell spirituous liquors to persons assembled for divine worship. Nor shall any other person bring to any church or meeting-house yard, on days fixed upon for divine worship, and there attempt to sell or give away, on such days as aforesaid, any spirituous liquors or other articles, or erect any booth, harbour, or make a stand adjacent thereto, for the purpose of selling or giving away spirituous liquors and other articles, on such days. Nor shall any of these things be done within half a mile of said places (licensed taverns and stores excepted) under the penalty of five pounds for each and every offence; to be recovered by warrant before a justice of the peace and applied to the use of the poor of the county. And upon information made to a justice, of the commission of such offence, he shall issue his warrant against such offender, and have him brought to justice. Provided any person thinking himself aggrieved by the decision of a justice on such trial, may appeal to the succeeding county court. And in all such cases, it is the duty of the county attorney to appear and prosecute on behalf of the state.

This act is not intended to operate before the hour of ten in the forenoon, nor after the hour of four in the afternoon, where a church or meeting-house is situated within the limits of any town within this state. Nor shall any recovery be had in pursuance of this act, unless information of the offence be made within ten days after it is committed.

lies in different counties within this state, such petition shall be exhibited in the superior court where such real estate, or part of it lies; and where the estate lies in one county only, the petition for a division shall be to the county court of such county, and no other way. The said commissioners or a majority of them, being first sworn to do justice among the claimants according to the best of their skill and abilities, are empowered to charge the more valuable dividend or dividends, with such sum or sums as they shall judge necessary, to be paid to the dividend or dividends of inferior value, in order to make an equitable division; which sum or sums so charged, shall be paid to the owner or owners of the dividend or dividends of inferior value.

And the said commissioners or a majority of them, are further required, as soon as they can, to make a return of their proceedings and appropriations, under their hands and seals, ascertaining with precision the different tracts or parcels of lands, lots, or houses, with actual surveys of the same when necessary, to the court by which they were appointed; which return and appropriation shall be certified by the clerk and enrolled in his office, and registered in the office where such lands, lots, or houses respectively lie; and such return and appropriation shall be binding and valid in, among, and between the claimants, their heirs, and assigns, forever.

The said commissioners for their trouble and services, may take and demand whatever the court by which they may be appointed shall judge adequate to the trouble they may have been at, and for the expenses incurred either to surveyors or otherwise; the said expenses to be paid in equal proportions by the claimants. And if said charges are not paid on return of their proceedings and service, execution shall and may issue against the petitioner or petitioners in the same manner as for the attendance of witnesses.

Where real estates now are or hereafter may be held by two or more persons as tenants in common, they shall and may have the same liberty and privilege of having their said estates divided, as is provided by the act for dividing the estate of intestates; and the divisions when made, shall be good and effectual in law to bind the parties, their heirs, and assigns.

Whenever any court shall, on any petition being filed and commissioners appointed, order the sheriff of the county where the commissioners live to summon said commissioners to appear on the premises, for the purposes which may be set forth in said order, it shall be his duty to summon the same;

and when they or a majority of them shall have met, the sheriff or some justice of the peace shall administer the oath prescribed by the act in that case made and provided, before they proceed to execute the purposes for which they shall have been appointed.

The commissioners, in the division of the real estates of intestates shall divide the lands into equal shares in point of value as nearly as possible, by a subdivision of the more valuable tract or tracts; and if an equal division cannot be made without injury to the heirs, and some of them are obliged to be charged with the payment of sums of money to the dividend or dividends of inferior value, such sums of money shall not be payable until the minor shall arrive at the age of twenty one.

The sums so due from the more valuable dividends, shall bear an interest of six per cent per annum until paid. Provided always, that the guardians of such debtor minors, shall be at liberty, and are required to pay such sums, whenever assets shall come into their hands sufficient to discharge the same. And if such guardians shall fail to pay the sums due, when they have assets, they shall be answerable out of their own estate for the interest which shall accrue in consequence of such failure.

In all cases where a tenant in common of a piece, tract, or lot of land, shall be absent out of the state, it shall be lawful for his co-tenant, desirous of having said land divided, to give notice of such his intention, under an order of the court in which the petition shall be filed, for six weeks successively, by advertisement at the courthouse, or three different places in the county, and in the state gazette; and on proof thereof, the court shall proceed as if a copy of the petition and summons had been personally served.

PATROLS.

The several courts of pleas and quarter sessions within this state, shall have full power and lawful authority, to direct, in such manner and in such numbers, and under such rules, regulations, and restrictions, under which the patrols in their respective counties shall be appointed and governed; and the said patrols when appointed, shall be subject to such rules, regulations, and restrictions as their respective county courts shall ordain and establish, and under such fines and penalties as the said court shall fix and direct.

lies in different counties within this state, such petition shall be exhibited in the superior court where such real estate or part of it lies; and where the estate lies in one county only, the petition for a division shall be to the county court of such county, and no other way. The said commissioners or a majority of them, being first sworn to do justice among the claimants according to the best of their skill and abilities, are empowered to charge the more valuable dividend or dividends, with such sum or sums as they shall judge necessary, to be paid to the dividend or dividends of inferior value, in order to make an equitable division; which sum or sums so charged, shall be paid to the owner or owners of the dividend or dividends of inferior value.

And the said commissioners or a majority of them, are further required, as soon as they can, to make a return of their proceedings and appropriations, under their hands and seals, ascertaining with precision the different tracts or parcels of lands, lots, or houses, with actual surveys of the same when necessary, to the court by which they were appointed; which return and appropriation shall be certified by the clerk and enrolled in his office, and registered in the office where such lands, lots, or houses respectively lie; and such return and appropriation shall be binding and valid in, among, and between the claimants, their heirs, and assigns, forever.

The said commissioners for their trouble and services, may take and demand whatever the court by which they may be appointed shall judge adequate to the trouble they may have been at, and for the expenses incurred either to surveyors or otherwise; the said expenses to be paid in equal proportions by the claimants. And if said charges are not paid on return of their proceedings and service, execution shall and may issue against the petitioner or petitioners in the same manner as for the attendance of witnesses.

Where real estates now are or hereafter may be held by two or more persons as tenants in common, they shall and may have the same liberty and privilege of having their said estates divided, as is provided by the act for dividing the estate of intestates; and the divisions when made, shall be good and effectual in law to bind the parties, their heirs, and assigns.

Whenever any court shall, on any petition being filed and commissioners appointed, order the sheriff of the county where the commissioners live to summon said commissioners to appear on the premises, for the purposes which may be set forth in said order, it shall be his duty to summon the same;

and when they or a majority of them shall have met, the sheriff or some justice of the peace shall administer the oath prescribed by the act in that case made and provided, before they proceed to execute the purposes for which they shall have been appointed.

The commissioners, in the division of the real estates of intestates shall divide the lands into equal shares in point of value as nearly as possible, by a subdivision of the more valuable tract or tracts; and if an equal division cannot be made without injury to the heirs, and some of them are obliged to be charged with the payment of sums of money to the dividend or dividends of inferior value, such sums of money shall not be payable until the minor shall arrive at the age of twenty one.

The sums so due from the more valuable dividends, shall bear an interest of six per cent per annum until paid. Provided always, that the guardians of such debtor minors, shall be at liberty, and are required to pay such sums, whenever assets shall come into their hands sufficient to discharge the same. And if such guardians shall fail to pay the sums due, when they have assets, they shall be answerable out of their own estate for the interest which shall accrue in consequence of such failure.

In all cases where a tenant in common of a piece, tract, or lot of land, shall be absent out of the state, it shall be lawful for his co-tenant, desirous of having said land divided, to give notice of such his intention, under an order of the court in which the petition shall be filed, for six weeks successively, by advertisement at the courthouse, or three different places in the county, and in the state gazette; and on proof thereof, the court shall proceed as if a copy of the petition and summons had been personally served.

PATROLS.

The several courts of pleas and quarter sessions within this state, shall have full power and lawful authority, to direct, in such manner and in such numbers, and under such rules, regulations, and restrictions, under which the patrols in their respective counties shall be appointed and governed; and the said patrols when appointed, shall be subject to such rules, regulations, and restrictions as their respective county courts shall ordain and establish, and under such fines and penalties as the said court shall fix and direct.

All overseers of roads who shall refuse or neglect to do their duty as is by law directed, or who shall not keep the roads and bridges clear in repair, or let them remain uncleared or out of repair for and during the space of fifteen days, unless hindered by extreme bad weather, such overseer shall forfeit for every such offence the sum of forty shillings, over and above such damage as may be sustained; to be recovered by a warrant from any justice of the peace, by any person taking out the same, and to be applied to his own use.

The overseers of the several roads within this state, are authorised to cut poles and other necessary timber to enable them to comply with the duties enjoined on them in repairing and making bridges and causeways, without incurring any penalty thereby.—*Acts* 1784, c. 14.

Any person appointed overseer of a road in any county in this state, shall be deemed and held liable for any neglect in working on the road, until he shall have made return to the court of his county, and shall make it appear to their satisfaction that he has done the duties of an overseer by law directed.

All offences committed against the foregoing act shall be prosecuted by indictment.—*Acts* 1786, c. 18.

But no overseer of any public road shall be subject to any indictment for neglecting to set up sign-posts at the forks of roads as aforesaid unless he shall fail to set up the same for the space of fifteen days.—*Acts* 1812, c. 24.

It shall be the duty of each sheriff to apply at the clerk's office, by himself or some other proper person, within ten days after the rise of each court, for the orders of court appointing overseers of roads, rivers, and creeks, and shall, on receiving them, within twenty days, serve each person so appointed, with one copy of said orders, or leave the same at his usual habitation, and the other copy he shall return to the next county court happening thereafter, with the date of the service endorsed thereon, or the date when it was left at the residence of said overseer. And every clerk or sheriff failing to perform his duty herein, shall on conviction pay the sum of five pounds, to be applied as other similar fines.—*Acts* 1813, c. 15.

PARDON.

The power of granting pardons and reprieves, is vested by the constitution in the governor, except where the prosecution is carried on by the general assembly, or the law shall other-

wise direct. And in these cases, he can in the recess of the assembly, grant a reprieve until the next sitting of the general assembly.

He cannot however pardon a common nuisance while it remains unredressed, or so as to prevent an abatement of it. Neither can he pardon an offence against a popular or penal statute or act of assembly, after information brought.

Any suppression of truth, or suggestion of falsehood, in a charter of pardon, will vitiate the whole;—for the governor was misinformed. A pardon of all felonies will not pardon a conviction or attainder of felony; but the conviction or attainder must be particularly mentioned. And a pardon of felonies will not include piracy. But under these and a few other restrictions, it is a general rule that a pardon shall be taken most beneficially for the citizen.

A pardon may be upon condition, either precedent or subsequent, on the performance whereof the validity of the pardon will depend.

A pardon by act of assembly need not be pleaded, but the court must take notice of it; and the offender cannot lose the benefit thereof by his negligence, as he may of the governor's pardon. The latter must be specially pleaded at a proper time. For if a man is indicted and has his pardon, and pleads the general issue, he has waived the benefit of his pardon. But if he avails himself th reof as soon as by course of law he may, a pardon may be either pleaded upon arraignment, or in arrest of judgment, or in bar of execution.

The effect of a pardon by the governor is to acquit the offender of all corporal penalties and forfeitures annexed to that offence for which he obtains pardon, and to give him a new credit and capacity.

An offence cannot be pardoned before it is committed.—Nor can a pardon release a recognizance for keeping the peace.—*Hayw.*

PARTITION.

The judges of the superior courts of law and equity, and the justices of the courts of pleas and quarter sessions, are required and empowered, on petition of one or more persons claiming the real estate of any intestate, to appoint five commissioners to divide and appropriate the same or so much thereof as shall be prayed for, and the court shall judge proper and requisite according to law. In all cases where the real estate

lies in different counties within this state, such petition shall be exhibited in the superior court where such real estate or part of it lies; and where the estate lies in one county only, the petition for a division shall be to the county court of such county, and no other way. The said commissioners or a majority of them, being first sworn to do justice among the claimants according to the best of their skill and abilities, are empowered to charge the more valuable dividend or dividends, with such sum or sums as they shall judge necessary, to be paid to the dividend or dividends of inferior value, in order to make an equitable division; which sum or sums so charged, shall be paid to the owner or owners of the dividend or dividends of inferior value.

And the said commissioners or a majority of them, are further required, as soon as they can, to make a return of their proceedings and appropriations, under their hands and seals, ascertaining with precision the different tracts or parcels of lands, lots, or houses, with actual surveys of the same when necessary, to the court by which they were appointed; which return and appropriation shall be certified by the clerk and enrolled in his office, and registered in the office where such lands, lots, or houses respectively lie; and such return and appropriation shall be binding and valid in, among, and between the claimants, their heirs, and assigns, forever.

The said commissioners for their trouble and services, may take and demand whatever the court by which they may be appointed shall judge adequate to the trouble they may have been at, and for the expenses incurred either to surveyors or otherwise; the said expenses to be paid in equal proportions by the claimants. And if said charges are not paid on return of their proceedings and service, execution shall and may issue against the petitioner or petitioners in the same manner as for the attendance of witnesses.

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Whenever any court shall, on any petition being filed and commissioners appointed, order the sheriff of the county where the commissioners live to summon said commissioners to appear on the premises, for the purposes which may be set forth in said order, it shall be his duty to summon the same;

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the payment of the judgment and costs which may be recovered against such person in the superior court; which bond shall be transmitted by the said magistrate with the writ and other papers, to the court to which they are returnable. And the magistrate before whom the cause was tried, is authorised and required to take such security, in the same manner as security is taken in county courts.

RELIGIOUS SOCIETIES.

By the acts of assembly of 1796, c. 11, it is declared to be lawful for any religious society or congregation in this state, if they should deem it necessary, at any time to elect any number of persons they may think proper, as trustees for their respective societies or congregations, from whose body they may have been selected; and all such persons so appointed, or their successors in office, are vested with ample power to purchase and hold, in trust for the society or congregation to which they may belong, any lands, houses, or tenements, and to receive gifts and donations of any nature or kind whatsoever, for the use and benefit of such society or congregation. Provided nevertheless, that by virtue of this act, no single congregation or society shall hold more lands than in value shall amount to the sum of 200*l.* yearly, and in quantity to 2000 acres. All which shall be subject to taxes like other land.

The said trustees are authorised to sue and be sued for any gift or donation, whether real or personal property. And if any recovery be made by said congregation or society, or their trustees, such recovery shall enure to the sole use of said society or congregation.

It shall be lawful for such religious societies or congregations, at any time, to cause the said trustees to account for all such property, of any nature or kind, as may have been committed to their trust. And in case of refusal or neglect when required so to do, it shall be lawful for the society or congregation to elect any number of persons as agents in behalf of said society or congregation, to bring suit for the recovery thereof.

All lands, houses, tenements, gifts, or donations, of any kind or nature whatsoever, that have been heretofore or may hereafter be given, granted, or otherwise confirmed or conveyed to any religious society or congregation, or to any of the members thereof for the use of the said society or congregation, shall be hereby deemed and held valid in law to convey

to the said society or congregation, or respective societies or congregations, the absolute estate of all such property as may have been intended to be made or expressed in such deed of sale, will, or gift. Provided nevertheless, that nothing herein shall affect the claims of any other person except the donor, or his heirs, or those claiming under him or them from whom the respective societies or congregations may have derived their titles. And provided also, that nothing herein shall be so construed as to extend to the establishment of any church or religious society or congregation in any wise whatever.

By acts 1809, c. 20, the trustees now acting, or who may hereafter act under the authority of the above recited act, shall be enabled to sue and be sued, plead and be impleaded, in any court of record whatever, in all cases of tort or contract, of and concerning the property, either real or personal, about which they are trustees. Also, in all matters of contract which may be cognizable before a justice of the peace, for the purposes aforesaid.

See *Public Worship*. *The State Constitution and Bill of Rights*.

RESCUE.

Rescue is the forcibly and knowingly freeing another from an arrest or imprisonment; and it is generally the same offence in the stranger so rescuing, as it would have been in a jailor to have *voluntarily* permitted an escape.

A rescue therefore of one apprehended for felony, is felony. For treason, treason. And for a misdemeanor, a misdemeanor also.

But here, as upon voluntary escapes, the principal must first be attainted, before the rescuer can be punished; and for the same reason. Because, perhaps, in fact, it may turn out, that there has been no offence committed.—4 *Bla. Com.* 131.

RESTITUTION OF STOLEN GOODS.

If any person be convicted of larceny by the evidence of the party robbed, he shall have full restitution of his money, goods, and chattels, or the value of them, out of the offender's goods, if he has any, by a writ to be granted by the judges or justices.

This writ of restitution shall reach the goods so stolen, notwithstanding the property of them is endeavoured to be altered by a sale. Or else, without such writ of restitution, the party may peaceably retake his goods wherever he happens to find them, unless a new property be fairly acquired therein. Or lastly, if the felon be convicted and pardoned, or be allowed his clergy, the party robbed may bring his action of trover against him for his goods, and recover a satisfaction in damages. But such action lies not before prosecution. For so felonies would be made up and healed. And also recaption is unlawful, if it be done with intention to smother or compound the larceny; it being then the heinous offence of theftbote.—4 *Bla. Com.* 163.

RIOT, ROUT, AND UNLAWFUL ASSEMBLY.

Riots, routs, and unlawful assemblies must have three persons at least to constitute them.

An unlawful assembly is where three or more do assemble themselves together to do an unlawful act; as to pull down enclosures; and part without doing it, or making any motion towards it.

Rout is, where three or more meet to do an unlawful act upon a common quarrel; as forcibly breaking down fences upon a right claimed of common or of way; and make some advances towards it.

A riot is, where three or more actually do an unlawful act of violence, either with or without a common cause or quarrel; as if they beat a man, or do any other unlawful act with force or violence; or even do a lawful act, as removing a nuisance in a violent and tumultuous manner.

The punishment of unlawful assemblies is by fine and imprisonment. Riots and routs are punished in the same manner; and sometimes, in enormous cases, with the pillory.

Also, by the statute of 13 Hen. 4, c. 7, any two justices, with the sheriff or under sheriff, may come with the *posse comitatus*, if need be, and suppress any such riot, assembly, or rout; arrest the rioters, and record, upon the spot, the nature and circumstances of the whole transaction. Which record alone shall be a sufficient conviction of the offenders.

All persons, except persons decrepid, and infants under the age of fifteen years, are bound to attend the justices in suppressing a riot, upon pain of fine and imprisonment. And

any battery, wounding, or killing the rioters, that may happen in suppressing the riot, is justifiable.

This record may be made by the justices, whether the offenders be in custody at the time or escaped.

The record thus to be made, ought to be certain as to the time and place of the offence, and the number of persons concerned therein, and the several kinds of weapons made use of by them, and all other circumstances of the fact; in order that the parties may appear to be guilty within the meaning of the statute, and also how far they are guilty; and that the justices have pursued the power given to them by the statutes.

The record may be excepted against if it do not appear to have been made by the sheriff or under sheriff, in concurrence with the justices.

The record ought to remain with one of the justices.

When the record is made up, the offenders should be committed to jail by the justices till they pay a fine; which the same justices must assess —4 *Bla. Com.* 146.

See *Appendix* for the Forms.

RIVERS AND CREEKS.

Five of the justices of the county court are authorised and empowered, where an inland river or stream shall run through the county of which they are justices, by order of court, to appoint commissioners to view and inspect such river, and make out a scale of the expense of labour with which the opening and clearing the same will be attended, and if the same shall be deemed within the compass of the abilities of the county, and shall judge the burthen will be compensated by the utility, to appoint and authorise the commissioners to proceed in the most expeditious manner in the opening and cleansing the same, by taking such hands off the making or repairing the public roads as the court shall permit and direct to be appropriated to such work; which hands shall be placed under overseers in companies, every overseer and company to have a distinct portion of such rivers or streams laid off by the court; which overseers and men of companies are subject to the same rules, and double the penalties, as by law imposed on the overseers and working hands on public roads. But no overseer or hands appointed to open and cleanse na-

vigable rivers and streams, shall be compelled to work on public roads.—*Acts* 1784, c. 14.

The justices of the county courts, where any inland river or stream of water is or shall be the line of the county whereof they are justices, shall have all the powers and authority given by the act entitled "An Act to empower the County Court of Pleas and Quarter Sessions of the several Counties in this State to order the Laying out Public Roads, and to establish and settle Ferries, and to appoint where Bridges shall be built, and to clear Inland Rivers and Creeks," for the purposes therein mentioned, to the justices of the county court of any county through which an inland river or stream doth run.

The justices of each of the said courts respectively, where any such inland river or stream should run through the county or be a line of the county whereof they are justices, shall have full powers and authority, where the same shall appear necessary and expedient to them, to direct the commissioners by them appointed in virtue of this act, and the said act the title whereof is above recited, to purchase or hire a flat, with a windlass, and the appurtenances necessary to remove loose rocks and other things which may by such means be more easily removed; and allow the same flat, windlass, and appurtenances to be paid for out of the county tax. But nothing in this act contained shall affect private property.—*Acts* 1785, c. 25.

The county courts may order the inhabitants of their respective counties to clear out inland rivers and creeks for the passage of boats, where five of the justices of said court shall think it necessary; and to appoint hands and overseers to carry their orders into effect.—*Acts* 1790, c. 24.

The commissioners appointed for the purposes aforesaid, shall give notice at least three days previously, for all persons to assist and work on any inland river or creek, agreeably to the intention and spirit of the law; and if any person or persons shall thereafter obstruct the free passage of boats, by falling trees or by any other means whatever, he or they so offending shall forfeit and pay the sum of five pounds, to be recovered by the commissioners aforesaid, and by them applied to the purposes of clearing out and making easy the navigation of their inland rivers and creeks respectively.—*Acts* 1776, c. 17.

In future, it shall be the duty of the county solicitor for each county through any part or on the borders of which any stream may pass, to inform himself of the laws, whether private or public, made for the improving the navigation of such stream

or streams; and where the power of carrying said laws into effect is vested in the courts, to apply to the court of which he is solicitor, at the first term thereof, which shall be held for the annual election of sheriff, to make the necessary orders and appointments for effecting the object of such laws; and if such court shall fail or refuse to make such orders and appointments, it shall be the duty of such solicitor to make a record upon the state docket, of his application, and appeal thereon to the next superior court of law for said county, where it shall be the duty of the solicitor of the superior court, or person acting as such, to apply to the judge to make such orders and appointments as may be necessary for carrying such laws into effect. And, to enable the judge to obtain such information as he may need to govern him in making such orders and appointments, he is hereby empowered to call upon the clerk, sheriff, grand jurors, petit jurors, or any other persons who may be attending the court, for any information which it may be in their power to give, touching the subject; and to make all such orders and appointments as by the laws the county court may be empowered to make.

The county and superior court solicitors shall repectively be entitled to the same fees for any application they may make under this law as they are now allowed for prosecuting indictments; to be paid out of the county monies.

The clerk o the court, in which any order for the appointment of overseers or allotment of hands shall be made for the purpose of working on any stream, shall within ten days after the close of the court at which such orders were made, issue to the overseer so appointed, his orders, expressing therein the name of the stream, the distance he is to work thereon, and the hands appointed to work under him, and deliver the same to the sheriff, whose duty it is to deliver them to the overseer.—*Acts* 1809, c. 25.

It shall be the duty of the clerks of each and every court of pleas and quarter sessions of this state, within ten days after each court, to furnish their respective sheriffs with two copies of each order, appointing overseers of the roads or rivers or creeks, that may have been made during the sitting of said court. And it is the duty of the sheriffs receiving the same, within twenty days after such receipt, to serve each person so appointed, with one copy of said orders, or leave the same at his usual habitation, and the other copy he shall return to the next county court endorsed on the back with the date of the service, or the date when left at the residence of said overseer.

No overseer shall be responsible for the insufficiency of the road, river, or creek, of which he is appointed overseer, until ten days after he shall be served with the notice of his appointment.—*Acts* 1812, c. 23.

It shall be the duty of the sheriffs to apply at the clerks' offices, either by themselves or some other persons, within ten days after the rise of each court, for the said orders, and to serve them as last abovementioned. And a penalty of five pounds is imposed as well on the clerk as the sheriff for non performance.—*Acts* 1813, c. 15.

ROADS AND FERRIES.

The county courts may order the laying out roads where necessary, and may discontinue such roads as now are or hereafter may be made, and alter roads so as to make them more useful, as often as occasion shall require.

All roads hereafter laid out, shall be laid out by a jury of freeholders to the greatest advantage of the inhabitants, and as little as may be to the prejudice of inclosures. Which laying out, and such damage as private persons may sustain, shall be done and ascertained by the same jury on oath;—which oath see under *Oaths*.

And all damages hereafter to be thus assessed shall be deemed a county charge, and be defrayed from the tax on each county, laid for contingent charges.

All roads so laid off shall be deemed public roads, and shall be at the least twenty feet wide; and where to the overseers of roads it may be deemed expedient to make or repair causeways on the same roads, they shall be at least fourteen feet wide, and the earth necessary to raise or cover the said causeways shall be taken from each side of the causeway equally, and so as to form a drain on each side of said causeway. And the overseers of public roads are directed to have completely cut and cleared all stumps and runners for the width of sixteen feet, in the centre of the highways under their care; of which width, necessary bridges through swamps and over small runs, creeks, or streams, are directed to be made.

If any person or persons whatsoever, shall erect, or cause to be erected across any public road, any bars, he shall be subject to pay to any person who may sue for the same, the sum of five pounds; to be recovered before any justice of the peace, to the use of the person who may sue for the same. But no gate on any toll bridge shall be liable to this fine.

No person shall turn, alter, or change any public road, unless it be by the order of the court of the county, founded upon the report of a jury, appointed and sworn as in the cases of laying off new roads, under the penalty of five pounds for each month such road is turned out of the old course without an order of court; to be recovered on a warrant before any justice of the peace by any person suing for the same. And the old road shall in no case be shut up, until the overseer shall certify to the court that the newly opened road is in good and sufficient order.

The county courts shall annually appoint overseers of the roads, who are obliged to summon all white males, between the ages of eighteen and fifty (except such persons as are or shall be exempt by the general assembly) and all other male taxables within their district, to meet at such places and times as to them shall seem convenient, for the repairing or making such roads as shall be necessary; and except such as are or have been heretofore by law excused from appearing at musters, and such as send three slaves, or other three sufficient hands, to work on the public roads. And whosoever shall upon such summons refuse or neglect to do and perform their duty, shall forfeit and pay the sum of five shillings per day, for each person so neglecting or refusing; to be recovered by a warrant from any justice of the county, and paid by the sheriff or constable to the overseer, and by him to be expended in hiring other hands to work on said roads.

All offences committed or done against the purview of the act in that case made and provided, shall hereafter be prosecuted by indictment in any court having cognizance thereof; and all forfeitures shall be recovered by action of debt, bill, plaint, or information; one half to the use of the prosecutor, the other half to the use of the state, unless the same have otherwise been provided for by law.—*Acts* 1784, c. 14.

No overseer of any public road shall be subject to any indictment for neglecting to set up sign posts at the forks of roads, in the manner directed by the above recited act, unless he shall fail to set up the same for the space of fifteen days.—*Acts* 1812, c. 24.

The county courts shall not appoint or settle any ferry, or order the laying out of any public road, or discontinue or alter such roads as now are or shall hereafter be made, unless upon the petition in writing of one or more persons in said court filed, and unless such petitioner shall make it appear to the satisfaction of the court, that all and every person over whose lands the said road may pass, or whose ferry heretofore

established, shall be within two miles of the place at which said petitioner may pray the court to establish a ferry, shall have had twenty days' notice of the intention of filing said petition, the court shall cause the said petition to be filed in the clerk's office until the succeeding court, and notice thereof to be posted during the same period at the courthouse door, at which court the justices present shall hear the allegations set forth in said petition, and if sufficient reason be shown, the court shall have power to appoint and settle said ferry or to order the laying out, or to discontinue or alter the said roads, as the case may be, in the same manner and under the same rules, regulations, and restrictions, as in the act first mentioned. From which judgment, any person dissatisfied may appeal to the superior court of law; but before obtaining the same, shall give bond with two or more sufficient securities to be judged of by the court, for the faithful prosecution of said appeal, and for the faithful performance of the judgment, sentence, or decree of the superior court. Which bond shall be made payable to the petitioner, or to the person opposing the same, as the case may be, and the appeal so granted shall be subject to the same rules and regulations as appeals in other cases from the county to the superior court; and the said superior court shall proceed to hear and determine said petition, as shall appear right and expedient. Provided nevertheless, that nothing herein shall authorise the superior court to interfere in the fixing or regulating the rates of ferriage, tolls of bridges, or the distribution or allotment of hands to work under overseers of the public roads.—*Acts* 1813, c. 18.

See *Rivers and Creeks. Overseers of Roads. Ways.*

ROBBERY—See *Larceny.*

ROUT—See *Riot.*

RUNAWAYS.

For the taking up servants or slaves, if ten miles or under, from the house or quarter where such servant or slave was kept, there shall be allowed by the master, if known, and residing in the county, if not, by the public, as a reward to the taker-up, seven shillings and six pence, and for every mile above ten, three pence, over and above the said sum; which said several rewards shall be paid by the church wardens of the parish where such taker-up shall reside, or where he shall

bring such runaway before a justice of the peace, and shall be levied again by the church wardens of the same parish, upon the said master or owner of such runaway, for reimbursement of the same to the parish. And for the greater certainty in paying the said rewards, and reimbursing the parish, every justice of the peace before whom such runaway shall be brought, upon the taking up, shall grant a certificate thereof, in which he shall mention the proper name and surname of the taker-up, and the county of his or her residence, together with the time and place of taking up the said runaway, and shall also mention the name of the said runaway, and the proper name and surname of the master or owner of such runaway, and the county of his or her residence, together with the distance of miles, in the said justice's judgment, from the place of taking up the said runaway to the house or quarter where the said runaway was kept. Upon producing which certificate to the church wardens of the parish where the same was granted, they shall pay to the taker-up of such runaway, or his assigns, the reward aforesaid, and shall levy the same again as aforesaid. But if it should happen, that the master or owner of such runaway should not reside, or have effects, in the county where the said certificate shall be granted by the justice as aforesaid, the said church wardens shall transmit the said certificate to the sheriff of the county where the owner of such runaway resides, or hath effects; who shall upon receipt thereof, immediately levy the same upon the goods and chattels of the master or owner of such runaway, and return the same to the church wardens aforesaid, or their order; any law, usage, or custom to the contrary notwithstanding.—*Acts* 1741, c. 24.

If any negro or other person who shall be taken up as a runaway, and brought before any justice of the peace, and cannot speak English, or through obstinacy will not declare the name of his or her owner, such justice shall, in such case, and he is hereby required, by a warrant under his hand, to commit the said negro slave or runaway, to the jail of the county wherein he or she shall be taken up. And the sheriff or under sheriff of the county, into whose custody the said runaway shall be committed, shall forthwith cause notice, in writing, of such commitment, to be set up on the courthouse door of the said county, and there to continue during the space of two months; in which notice, a full description of the said runaway, and his clothing, shall be particularly set down; and every sheriff failing to give such notice as herein is directed, shall forfeit and pay five pounds; which said forfeit-

ure shall and may be recovered, with costs, by action of debt; the one moiety whereof shall be to the church wardens, for the use of the parish, as well as towards defraying the charges that shall arise and become due by virtue of this act, and the other moiety to the person who shall sue for the same.

If within the space of two months the owner of any such negro slave or runaway cannot be known, or doth not claim the same, the sheriff of the said county to whose custody such runaway shall be committed, shall cause the said runaway to be delivered to the next constable, to be by him delivered to the next constable, and so from constable to constable, to the public jail of this government, after such manner, and to receive such punishment as in this act is directed.

When any negro or runaway as aforesaid, shall be delivered to the keeper of the public jail of this government, by virtue of this act, and his or her master or owner cannot be known, it shall and may be lawful for the keeper of the said jail upon his application to the general court, or the nearest county court to the said jail, or to any two justices out of court, with the consent of either of the said courts, or two justices as aforesaid, to let the said negro or runaway to hire, to any person or persons whom they shall approve of, for such sum or sums of money, or quantity of commodities, and for such term of time as they shall direct; and that out of the money or commodities arising by such hire, all fees relating to the taking up, imprisonment, and conveying to jail, and charges of maintaining such negro or runaway, shall be first paid and discharged, and the overplus, if any, disposed of as such court, who shall order the said negro or runaway to let out to hire, shall direct.

When the owner of such negro or runaway shall demand the same, the person to whom such negro or runaway shall be let out to hire, shall forthwith deliver him or her into the custody of the keeper of the public jail, and shall then also pay the hire in proportion to the time the said runaway hath served; and the keeper of the said jail shall deliver the said runaway to his master or owner, he or she paying down all fees and charges of taking up, imprisonment, conveying to jail, and maintaining such runaway, in case the hire of the said runaway be not sufficient.

When the keeper of the said public jail shall, by direction of such court as aforesaid, let out any negro or runaway to hire, to any person or persons whomsoever, the said keeper shall at the time of his delivery, cause an iron collar to be put on the neck of such negro or runaway, with the letters P. G.

stamped thereon. And that thereafter the said keeper shall not be answerable for any escape of the said negro or runaway.

When any runaway servant or slave shall be brought before any justice of the peace in this government, such justice shall, by his warrant, commit the said runaway to the next constable, and therein also order him to give the said runaway so many lashes as the said justice shall think fit, not exceeding the number of thirty-nine, well laid on, on the bare back of such runaway; and then to be conveyed from constable to constable, until the said runaway shall be carried home, or to the public jail, as aforesaid.

Every constable shall, on his receipt of such runaway, give a receipt for him or her; and every constable failing to execute such warrant, according to the tenor thereof, or refusing to give such receipt, shall forfeit and pay twenty shillings, to the church wardens, for the use of the parish wherein such failure shall be; to be recovered by a warrant under the hands of any two justices within the county where such constable shall reside. And such corporal punishment shall not deprive the master or owner of any runaway servant, of the other satisfaction herein by this act appointed to be had of such servant, for his or her running away.

If any sheriff, under sheriff, or constable, shall set to work, employ, or let out to hire, without order of court as aforesaid, any runaway servant or slave committed to the custody of any of them, or shall detain such runaway longer in his or their custody than by this act is directed, he or they so offending, shall forfeit and pay five pounds; to be recovered by action of debt; one moiety whereof to be paid to the church wardens, for the use of the parish where the offence shall be committed, and the other to him or them who shall sue for the same. And if any sheriff, or his under sheriff, or any constable, into whose hands any runaway servant or slave shall be committed by virtue of this act, shall negligently or wilfully suffer such runaway to escape the said sheriff, under sheriff, or constable, he or they shall be liable to the action of the party grieved, for recovery of his damages, at the common law, with costs.

All and every the constables within this government, for their encouragement to perform their duty, be, and they are hereby, for the future, exempted from the payment of all public, county, and parish levies, for their own persons, during their continuance in office; and the keepers of ferries within this government, shall give immediate passage to all consta-

bles, and their assistants, charged with conducting any runaway or runaways, either to the public jail, or to such runaway's master or owner, without charging such constable, or their assistants, for their ferriage, either going or returning; but all such ferriages of constables, and their assistants, shall be paid by the church wardens of the parish where such ferry keepers respectively live, and levied, as aforesaid, upon the respective masters or owners of such runaways.

When any negro or other runaway whose owner is supposed to be resident in any other state, shall be committed to any public jail of this state, the keeper of the said jail shall, by the first opportunity after such commitment, send a description of such negro or runaway, together with the account of the time of the commitment, and the county where such runaway is committed, to the press, to be advertised in the Virginia or South-Carolina Gazette; for which he shall be reimbursed by the owner of the said slave or runaway.

All penalties directed by the laws before the Revolution to be sued in the name of the vestry and church wardens, shall be sued in the name of the justices of the county where such parish was situated; and all penalties directed to be applied to the use of the parishes respectively, shall be applied to the uses of the respective counties, in which such parishes were situated. And the wardens of the poor, or a majority of them, in their respective counties, have the same powers as vestries formerly had in their parishes, in every respect, except the power of inducting ministers, and of laying or applying any future tax for religious purposes.

SABBATH—See *Vice and Immorality*.

SCHOOLMASTER.

Where a schoolmaster in correcting his scholar, happens to occasion his death, if in such correction he is so barbarous as to exceed all bounds of moderation he, is at least guilty of manslaughter. And if he makes use of any instrument improper for correction, and apparently endangering the scholar's life, as an iron bar, a sword, or kick him to the ground, and then stamp on his belly, and kill him, he is guilty of murder.

SEAMEN.

Where any sailor, seaman, or marine, belonging to the vessel of any foreign nation in amity with the United States, such vessel being within this state, shall desert, or enlist in the service of this state or of the United States, or be found wandering from his vessel, it shall be lawful for the master of such vessel, to reclaim such sailor, seaman, or marine, notwithstanding he may in the mean time be naturalized in this state. And any justice of the peace to whom the master may apply, shall grant his warrant for taking and conveying such sailor, seaman, or marine, from constable to constable, to the said vessel. Or on application from the consul, the governor with the advice of the council, may issue such orders to any sheriff, constable, or military officer, who shall yield due obedience thereto.

SEARCH WARRANT.

General warrants, whereby any officer or messenger may be commanded to search suspected places without evidence of the fact committed, or to seize any person or persons not named, whose offence is not particularly described and supported by evidence, are dangerous to liberty, and ought not to be granted.—*Bill of Rights sec.* 11.

Such a general warrant as is described in the bill of rights, leaves it in the discretion of a constable, or other common officer, to arrest what persons, and search what houses he thinks fit, and could never be legal, even though the bill of rights had not been made.

Likewise, a justice cannot upon a bare surmise, make a warrant to break a man's house to search for a felon, or for stolen goods; for it would be very inconvenient, that it should be in the power of any justice of the peace, or any other whosoever, upon a bare suggestion, to break the house of any person he pleased, either by night or by day, upon such surmise.

But if complaint be made on oath of goods stolen, and that the deponent suspects the goods are in such a house, and will show good cause of his suspicion, the justice may grant a warrant to search in such suspected places as are particularly mentioned in his warrant; and to attach the goods and the party

in whose custody they are found, and bring them before him or some other justice to be examined, and to abide such order thereupon as shall be agreeable to law.

And it is most proper that even such a warrant should be executed in the day time, though not absolutely necessary that it should.

If the door be shut, and if the stolen goods be in the house, the officer may break open the door, if after demand it be refused to be opened.

If the goods be not in the house, yet the officer is justifiable, but he that made the suggestion is punishable; for as to him the breaking open the door is lawful or unlawful, according to the event; to wit, lawful if the goods are there, unlawful if not there.

As to the goods brought before the justice. If it appear they were not stolen, they are to be restored to the possessors. If it appear they were stolen, they shall be deposited in the hands of the sheriff or constable, to the end the party robbed may proceed by indicting and convicting the offender, to have restitution.

As to the party having the goods. If not stolen, he is to be discharged. If stolen, not by him but by another that sold or delivered them to him, if it appears he was ignorant they were stolen, he may be bound over as a witness against him that sold them. If it appears he knew they were stolen, he must be committed or bound over to answer the felony to the proper court.

SELF-DEFENCE—See *Homicide.*

SELF-MURDER—See *Suicide.*

SERVANTS.

If any minister or reader shall wittingly publish, or cause, or suffer to be published, the bans of matrimony between any servants, or between a free person and a servant; or if any minister or justice of the peace shall wittingly celebrate the rites of matrimony between any such, without a certificate from the master or mistress of every such servant that it is done with their consent; he shall forfeit and pay five pounds, to the use of the master or owner of such servant; to be recovered by action of debt, bill, plaint, or information. And every servant so married without the consent of his or her

master or mistress, shall for his or her said offence, serve his or her said master or mistress, their executors, administrators, or assigns, one whole year, after the time of service by indenture or custom is expired.

No person whatsoever, being a Christian, or of Christian parentage, who shall be imported or brought in this state, shall be deemed a servant for any term of years, unless the person importing him or her shall produce an indenture, or some specialty or agreement, signifying that the person so imported did contract to serve such importer, or his assigns, any number of years, in consideration of his or her passage, or some other consideration therein expressed. And upon any contest arising between the master of any vessel, or other person importing any servant or servants, without indenture, upon any bargain or specialty as aforesaid, the same shall be determined at the next county court to be held for the county where the said servant or servants shall be imported. The justices of which court are empowered to hear and determine the same in a summary way; and such determination or judgment shall be conclusive and binding on the importer or servant or servants, either for the discharge of the said servant or servants, or to oblige him, her, or them to serve the importer, or his assigns, as the matter shall appear.

If any Christian servant, whether he or she be a servant by importation, or otherwise, shall at any time or times, absent him or herself from the service of his or her master or mistress, without license first had, he or she shall satisfy and make good such loss of time, by serving, after their time of service by indenture or otherwise is expired, double the time of service lost or neglected by such absence; and also such longer time as the county court shall think fit to adjudge, in consideration of any further charge or damage the master or mistress of such servant may have sustained, by reason of his or her absence as aforesaid.

If any Christian servant shall lay violent hands on his or her master or mistress, or overseer, or shall obstinately refuse to obey the lawful commands of any of them, upon proof thereof by one or more evidences before any justice of the peace, he or she shall, for every such offence, suffer such corporal punishment as the said justices shall think fit to adjudge, not exceeding twenty-one lashes.

All masters and owners of any servant or servants, shall find and provide for their servant or servants, wholesome and competent diet, clothing, and lodging, at the discretion of the county court; and shall not, at any time, give immoderate

correction; neither shall at any time, whip a Christian servant naked, without an order from a justice of the peace. And if any one shall presume to whip a Christian servant naked, without such order, the person so offending shall forfeit and pay the sum of forty shillings to the party injured; to be recovered with costs, upon petition to the county court (without the formal process of an action) as by law is determined for servants' complaints to be heard and determined; provided complaint be made within six months after such whipping.

All servants by indenture or otherwise as aforesaid, shall have their complaints received by a justice of the peace, who if he find cause, shall bind the master, mistress, or overseer, over, to answer the complaint at the next county court, and it shall be there determined. And all complaints of any servant or servants shall and may, either immediately, or as aforesaid, by virtue hereof, be received at any time, upon petition or information in the court of the county wherein they reside, without the formal process of an action; and also full power and authority is hereby given to the said court, at their discretion (having first summoned the master, mistress, or overseer, to justify themselves if they think fit) to adjudge, order, and appoint what shall be necessary as to diet, lodging, clothing, or correction. And if any master, mistress, or overseer shall not thereupon comply with the order of the said court, the said court is hereby authorised and empowered, upon a second just complaint, to order such servant or servants to be immediately sold, at public vendue, by the sheriff; and after the charges are deducted, the remainder of what the said servant or servants shall be sold for, to be paid to the owner.

If such servant or servants shall be sick or lame, or otherwise rendered so incapable that he, she, or they cannot be sold for such value as shall satisfy the fees, and other incidental charges accrued, the court shall then order such servant or servants into the care of the church wardens of the parish; and the master, mistress, or owner shall provide the said servant or servants with such convenient necessaries as they shall direct and judge sufficient for his, her, or their support, until the time due by law from such servant or servants to their master, mistress, or owner shall be expired, or until such servant or servants shall be so recovered as to be sold for defraying the said fees and charges.

The said court from time to time shall order the charges of keeping such servant or servants, to be levied upon the goods and chattels of the master or owner of such servant or

servants, in case they should neglect or refuse to provide for the same.

All servants aforesaid, whether by indenture or otherwise, as well femes covert as others, shall, in like manner as is provided upon complaints of misusage, have their petitions received in the said county courts, for their wages, freedom, and freedom dues, without the formal process of an action; and proceedings and judgment shall, in like manner, be had thereupon.

No master or mistress of any servant or servants, who shall happen to be sick or diseased during the time of their servitude, and unable to perform their daily labour, shall, upon any pretext whatsoever, remit to such servant or servants, any part of his, her, or their time, to be cleared of them, whereby the said servant or servants may perish, or become a charge to the county. And whosoever shall hereafter offend herein, or shall not use and endeavour all lawful means for the recovery of such their servant or servants as shall happen to be sick or diseased, during the time of his, her, or their servitude, shall forfeit for each and every servant so turned off or neglected, five pounds; to be levied by an order from the county court before whom the fact shall be proved, by the oath of one or more witness or witnesses, and to be paid into the hands of the county wardens where the offence shall be committed, and disposed of towards the support and maintenance of such servant or servants so turned off or neglected, for the recovery of his, her, or their health and strength; and such servant or servants shall be, by the county court or any two justices, during the time of their infirmity, ordered into the hands and care of the wardens of the county in which his, her, or their master or owner shall dwell. But in case such sick or diseased servant or servants respectively, shall not live to the expending the said whole sum of five pounds, then the remainder to be disposed of to the use of that county. Or in case the said sum of five pounds should not be sufficient to support such servant during his servitude, or until his recovery, in such case the county court is authorised and empowered to order a sufficiency to be levied from time to time, as the same shall become due, upon the goods and chattels of the master or owner of such servant or servants, if they shall neglect or refuse to provide the same agreeably to the orders of the said court; and such servant or servants so neglected or turned off, shall, upon the recovery, be set free from their master or owner.

If any servant or servants in this state, shall through his, her, or their own wilful misbehaviour, happen to have any disease, or any broken bones, bruises, or other impediments, whereby they may be disabled to perform their labour as they ought to do, and become chargeable to their master or owner, such servant or servants shall serve his, her, or their master or owner, after the time of his, her, or their service by indenture or otherwise is expired, such time as shall by the county court, be adjudged sufficient to satisfy the charges expended on him, her, or them, for his, her, or their recovery; and shall also serve over so much time, as he, she, or they, by any such means, were disabled to serve.

If any servant or servants shall unjustly vex and trouble his, her, their master or owner, with groundless complaints against them to the county courts, or to any justice or justices of the peace, such servant or servants shall by the county court be ordered to serve his, her, or their master or owner, so injured by such unjust and groundless vexation, after the expiration of the time he, she, or they have then to serve, the double term and space of that time he, she, or they neglected and lost, in prosecution of such complaints.

Every servant who shall be in jail for his, her, or their own offence, shall serve his, her, or their master or owner, double the time he, she, or they shall remain there, after the expiration of the time he, she, or they have to serve by indenture or otherwise; and further serve his, her, or their said master or owner, such time as shall be ordered by the county court, as a satisfaction for the fees and other charges his, her, or their master or owner hath expended for such servant or servants.

In all cases of penal laws, whereby persons free are punishable by fine, servants shall be punished by whipping, at the discretion of any court or justice or justices, before whom such fine or fines are recoverable, not exceeding thirty-nine lashes; unless the servant so culpable, can and will procure some person or persons, to pay the fine.

No free man or trader whatsoever, shall buy, sell, trade, barter, or borrow any commodities whatsoever, with, to, or from any apprentice or servant, whether so by indenture or otherwise, without the consent of the master, mistress, or owner of such apprentice or servant, upon pain of forfeiting treble the value of the commodity or commodities so traded for, bartered, or sold; and also to pay the sum of six pounds to the use of the said master, mistress, or owner; to be recovered by warrant before a justice of the peace in the county where the offence shall be committed. And if it shall so

happen, that the person so offending shall not be able to pay treble the value of the commodities so traded for, sold, or bartered, and the sum of six pounds, such person shall then be adjudged by the county court to be sold as a servant for the same.

Every servant, by indenture or otherwise, who shall embezzle, purloin, wilfully waste, or shall trade, sell, or barter, or otherwise make away any of his or her master or mistress's corn, cattle, sheep, hogs, stock, or other goods, or provisions, or commodities whatsoever, shall, upon conviction of every such offence, by one or more testimonies upon oath, or confession of the party, before any county court within this state, be adjudged by the said court, to serve his or her said master or mistress such time as the court shall think reasonable, for the said offence, after the said time by indenture or otherwise as aforesaid, is expired.

If any woman servant shall hereafter be with child, and bring forth the same during the time of her servitude, she shall for such offence, be adjudged by the county court, to serve her master or mistress one year after her term of service by indenture or otherwise is expired.

If any woman servant shall hereafter be delivered of a child, begotten by her master, such servant shall, immediately after delivery, be sold to the wardens of the poor of the county where the offence shall be committed, for one year, after the time of service by indenture or otherwise, is expired; and the money arising by such sale, shall be to the use of the county. And if any white servant woman shall, during the time of her servitude, be delivered of a child, begotten by any negro, mulatto, or Indian, such servant, over and above the time she is by this act to serve her master or owner, for such offence, shall be sold by the wardens of the poor of the county, for two years, after the time by indenture or otherwise, is expired; and the money arising thereby applied to the use of the said county; and such mulatto child or children of such servant, to be bound by the county court, until he or she arrive at the age of thirty-one years.

All and every person or persons already imported, or who shall be hereafter imported into this state, as a tradesman or workman, on wages, and shall be found not to understand such trade or employment, the master or owner of such servant may bring him or her to any county court of this state; which court, upon complaint made to them of such deceit, are empowered and directed to enquire into the same; and upon finding any such fraud, may judge and direct such satis-

faction to be made to the master or owner of such servant, either by defalcation of the wages, or part thereof, as to them shall seem just.

If any person who is or shall hereafter be imported or brought into this state, as a tradesman or other workman, on wages, shall refuse or neglect to perform his duty, or shall absent himself from his master or owner's service without leave, in every such case it shall and may be lawful for the justices of the county court wherein such master or owner resides, upon complaint, and proof to them made, to order such satisfaction and reparation to the master or owner of such servant, for the damages sustained by him for such refusal or neglect, as to them shall seem just; and for every day such servant shall absent himself from his master or owner's service as aforesaid, to order and direct such servant to serve his or her said master or owner, two days for every day's absence, after his time by indenture or otherwise, is expired, and that without any wages to be paid for such service.

There shall be allowed to every servant, whether by indenture or otherwise, not having yearly wages, at the expiration of his or her service, three pounds, besides one sufficient suit of wearing clothes, for such servant or servants.

The master may correct his apprentice or servant for negligence or other misbehaviour, so it be done with moderation. See *Homicide*. But if the master's wife beat him it is unlawful.

The master may assist his servant in any action at law against a stranger; whereas in general, it is an offence against public justice to encourage suits and animosities, by helping to bear the expense of them, and is called in law *Maintenance*.

The master may also sue any man for beating or maiming his servant, assigning as a special reason for so doing, his own damage by the loss of his service, which must be proved upon the trial. He may also justify an assault in defence of his servant, and a servant in defence of his master. And the master may sue any person for seducing his servant to leave him. But if the new master did not know him to be the servant of the other, the action will not lie, unless he refuses to restore him after he does know it.

If the servant commit a trespass by the encouragement or command of the master, the master shall be guilty of it. Not that the servant is excused. For he ought to obey his master only in matters that are honest and lawful

If an innkeeper's servants rob his guest, the master is liable to make restitution. Also, if the drawer at a tavern sells

a man bad wine, whereby his health is injured, he may bring an action against the master. For the permitting him to draw and sell it, is impliedly a general command.

Whatever a servant is permitted to do in the usual course of his business, is equivalent to a general command. If I pay money to a banker's servant, the banker is answerable for it. But if I pay it to a physician's servant, whose usual business it is not to receive money for his master, and he embezzles it, I must pay it over again. If a steward makes a lease of a farm without the owner's knowledge, the owner must stand to the bargain; for this is the steward's business. A wife, a friend, a relation, that use to transact business for a man, are, as to this purpose, his servants, and he must answer for their conduct. If I usually deal with a tradesman by myself, or constantly pay him ready money, I am not answerable for what my servant takes up upon trust. But if I usually send him upon trust, or sometimes upon trust and sometimes with ready money, I am answerable for all he takes up.

If a servant by his negligence does any damage to a stranger, the master shall answer for it. If a smith's servant lames a horse while he is shoeing him, the master, and not the servant is answerable. But then the damage must be done while he is actually employed in his master's service, otherwise the servant shall answer for it himself.

If a servant keeps his master's fire negligently, so that his neighbour's house is burnt down thereby, the master shall answer for it; this negligence happening in his service.

The master is chargeable if any of his family do lay or cast any thing out of his house into a street or common road, to the damage of any individual, or the common nuisance of the citizens.

As to the servants' embezzling their master's goods—see *Larceny*.

After a servant has received money for his master, and paid it over to him, he is not liable to an action. But before it is paid over, an action may be brought against him.

See *Slaves*.

SHERIFF.

There shall be a sheriff in each county in this state.—*Const.* sec. 38.

Every county court shall annually elect and nominate a freeholder of sufficient circumstance to execute the office of sheriff,

who shall thereupon be commissioned by the governor or commander in chief, to execute that office for one year. And if any sheriff so nominated shall remove out of his bailiwick, or fail to give security, or refuse to qualify, or shall happen to die in the time of his sheriffalty, the court shall at the next sessions elect and nominate another as aforesaid.

No sheriff shall be compelled to serve more than one year, and until the next succeeding term of his county court after the expiration thereof. And every person accepting the office of sheriff, shall before his executing the same, in his county court, take the oath appointed for the qualification of public officers, and also an oath of office—which see under *Oaths*. And such sheriff shall also enter into bond before the justices of his county court, in 5000*l.* with two or more good and sufficient sureties, payable to the governor and his successors, with condition in form following:

The condition of the above obligation is such, that whereas the above bounden is constituted and appointed sheriff of county, by a commission from the governor, under the seal of the state, dated the day of last past. If therefore the said shall well and truly execute, and due return make, of process and precepts to him directed, and pay and satisfy all fees and sums of money by him received or levied by virtue of any process, into the proper office, by which the same by the tenor thereof ought to be paid, or to the person or persons to whom the same shall be due, his, her, or their executors, administrators, attornies, or agents,—and in all other things well, truly, and faithfully execute the said office of sheriff, during his continuance therein, then the above obligation to be void, otherwise to remain in full force and effect.

Which said bond every county court shall demand and take, and cause to be acknowledged before them in open court and recorded. And such bond shall not become void upon the first recovery, or if judgment shall be given for the defendant; but may be put in suit and prosecuted from time to time until the whole penalty shall be recovered.

If any person who shall hereafter be appointed sheriff, shall refuse to accept and execute the office of sheriff, he shall forfeit and pay the sum of fifty pounds lawful money of this state, to the use of the public; to be recovered in the name of the governor, by action of debt, in any court having cognizance thereof. But if any person who shall hereafter be nominated or appointed to execute the office of sheriff of any county in this state, shall be willing to execute the same, but cannot give security as by law required, and shall make oath in the county court that he hath used his best endeavours, without

fraud or collusion, to get such securities, that then such person shall not incur the penalty aforesaid.

No member of the general assembly, or council of state, shall be nominated or commissioned, nor shall any practising attorney be obliged to act as a sheriff of any county within this state.

Every sheriff, by himself or his lawful officers or deputies, shall from time to time execute all writs and other process to him legally issued and directed within his county or upon any bay, river, or creek, adjoining thereto, and make due return thereof, under the penalty of forfeiting fifty pounds lawful money of this state for each neglect, where such process shall be delivered to him twenty days before the sitting of the court to which the same is returnable, to be paid to the party grieved by order of such court, upon motion and proof of such delivery, unless such sheriff can shew sufficient cause to the court at the next succeeding court after such order; and for every false return the sheriff shall forfeit and pay fifty pounds, one moiety thereof to the party grieved, and the other moiety to him or them that will sue for the same; to be recovered with costs, by action of debt, bill, or plaint, in any court of record, and moreover be further liable to the action of the party grieved for damages. And no sheriff shall return upon any writ that the defendant is not to be found within his bailiwick, unless such sheriff shall have actually been at the house or place of abode of such defendant. And where any defendant shall be a known inhabitant of any other county than that of the sheriff to whom such process shall be directed, the sheriff shall return the truth of the case, and thereupon an *alias* shall issue, directed to the sheriff where such defendant resides, if the original process shall issue from a superior court, and variance of the addition of the place of abode of the defendant shall not be deemed error, or matter of abatement.

It shall not be lawful for any sheriff, or other officer, to execute any writ or other process upon a Sunday, or upon any person attending his duty at a muster of the militia, or any election of members of assembly, or overseers of the poor, or county wardens, or any person summoned to attend as an evidence, or a juror. And all such services of process are declared illegal and void, unless the same be issued against any person or persons for treason, felony, riot, rescous, breach of the peace, or upon an escape out of prison or custody, and such process shall and may be executed at any time or place.

Each and every sheriff within this state, shall, on levying any execution for any debt, damages, or costs, make out, if required, a bill of his fees due on such action or suit, and set down under the said bill a true copy of the clerk's, attorney's and other endorsed fees, separately and distinctly, and give a receipt for the same to the party against whom such execution shall issue, and also shall endorse the amount of his own fees he shall so take on such execution, to be entered by the clerk on the execution docket, for which copy the said sheriff may demand and receive one shilling of the person requesting the same; and if any sheriff, or other officer, empowered to levy any execution, shall fail to do so, such sheriff or other officer shall forfeit and pay fifty pounds to any person who will sue for the same.

It shall not be lawful for any sheriff, or his officer or deputy, to take any obligation of or from any person or persons in his custody, for or concerning any matter or thing relating to his office, otherwise payable than to himself as sheriff, and dischargeable upon the prisoner's appearance, and rendering himself at the day and place required in the writ, whereupon he was or shall be taken or arrested, and his securities discharging themselves therefrom as special bail of such prisoner, or such person or persons keeping within the limits and rules of any prison. And every other obligation taken by any sheriff in other manner or form, by colour of his office, shall be null and void, except in any special case any other obligation is or shall be by law particularly and expressly directed; and that no sheriff shall demand, exact, take, or receive, any greater fee or reward whatsoever, nor shall have any allowance, reward, or satisfaction, from the public, for any service by him done, other than such sum as the county court shall allow for *ex officio* services, and the allowances given and provided, or which shall be from time to time given and provided by law.

If any sheriff or other officer hath made, or shall make any return upon any writ of *fieri facias* or *venditioni exponas*, that he hath levied the debt, damages, and costs, or fees, as in such writ required, or any part thereof, and hath not or shall not pay the same into the proper office, or to the party to whom the same is payable, or his attorney, at the return of such writ, or hath or shall return upon any writ of *capias ad satisfaciendum*, or attachment for not performing a decree in chancery for the payment of any sum of money or other matter, that he hath taken the body or bodies of any defendant or defendants, and hath the same ready to satisfy the money or other

matter in such writ mentioned, and shall have actually received the money or other matter from the defendant or defendants, or any part thereof, or suffered him, her, or them, to escape with consent of such sheriff or officer, and hath not or shall not pay the same into the proper office, or to the party to whom the same is payable, or his attorney, that then and in either of the said cases, it shall and may be lawful for the creditor, at whose suit a *fieri facias*, *venditioni exponas*, *capias ad satisfaciendum*, or attachment, hath or shall issue, upon motion made in the court from whence such writ is sued, or the superior court of the district wherein such sheriff shall reside, to demand judgment against such sheriff or other officer, for the money or other matter mentioned in such writ; and such court is authorised and required to give judgment accordingly for the same, with costs, and to award execution against the goods and chattels, lands and tenements, of such sheriff; provided such sheriff have ten days' previous notice of such motion. And where it shall so happen that the time of any person's sheriffalty shall be expired, or he shall be removed from his office before such motion made by the creditor or creditors, the same remedy, proceedings, and relief, shall and may be had against him, as if such person was actually in office.

Where any sheriff shall take the body of any debtor in execution, and shall wilfully or negligently suffer such debtor to escape, and such sheriff, or person suing out such execution, shall die before a recovery can be had against such sheriff for such escape, the person suing out such execution, his executors or administrators, shall and may have and maintain an action of debt against such sheriff, his executors, or administrators, for the recovery of all such sums of money as are mentioned in the said execution, and damages for detaining the same.

The delivery of prisoners by indenture between the old sheriff and the new, or the entering upon record in court, the names of the several prisoners, and the causes of their commitment, delivered over to the new sheriff, shall be sufficient to discharge the late sheriff from all suits and actions for any escape that shall happen.

The respective sheriffs shall be entitled to receive the same fees for any services under the act, entitled "An Act for giving an Equity Jurisdiction to the Superior Courts," as for the like services in proceedings at law, and be entitled to the same remedy for the recovery of them.

The sheriff having a justice of the peace's warrant directed to him, shall execute the same; but he need not go in person to execute the same, but may authorise another to do it.

It is no excuse to the sheriff to return that he could not execute a precept because of resistance, or kept off by force and arms, or the like; for he may take with him the power of the county; and he shall be, for making such a return, upon the spot, absolutely amerced.

Over and above the usual bonds directed by law to be given by sheriffs, each sheriff before he enters into office, shall give a distinct bond, with two securities to be approved by the court of pleas and quarter sessions, in the sum of 2000*l.* to the governor, conditioned for the due collection, payment and settlement of the public taxes; which bond, after having duly recorded the same, the clerk of each county court is directed to forward to the treasurer of the state, together with a list of the taxable property of the county.—*Acts* 1784, c. 2.

Every sheriff hereafter appointed, shall enter into bond with sufficient security, payable to the chairman of the court, for the time being, and his successors in office, for the due collection and accounting for the county and poor tax, as well as the public tax; which said bond shall be executed previous to his entering on the execution of his office,—*Acts* 1798, c. 30.

When any sheriff, constable, or clerk of any court within this state shall, by virtue of his office, receive any sum or sums of money for or on account of any person or persons whatsoever, and shall not on application made to him, pay the same, such person or persons may give to such sheriff, constable or clerk, ten days' notice in writing, to be proved in the usual manner, to appear before some justice of the peace of the county, to show cause why the justice should not grant judgment and issue execution for the same against him and his securities. And if such sheriff, constable, or clerk shall not appear before such justice, or if appearing, does not show sufficient cause to the contrary, it shall be lawful for such justice to enter up and grant judgment and award execution against such delinquent for the money due. Provided however, the sum does not exceed the jurisdiction of a justice of the peace out of court.—*Acts* 1800, c. 18.

The remedy in the above case shall be by warrant against the said officer and his securities, either while he is in office or afterwards, to the amount of the justice's jurisdiction.—*Acts* 1802, c. 18.

No person shall be re-elected sheriff, who does not, at the time by law appointed for choosing a sheriff and before the vote shall be taken, produce to the court, receipts from the public treasurer, county trustee, and wardens of the poor for the time being, in full of all monies by him collected, or which ought to have been by him collected, for the use of the state and county, and for which he shall have become accountable. *Acts* 1806, c. 8.

It shall be lawful for a sheriff to vacate his office by resigning the same to the court of pleas and quarter sessions of his county, (a majority of the acting justices being present and accepting of such resignation) and thereupon the said court may proceed to appoint a proper person as sheriff until the next annual election, under the same rules, regulations, and restrictions as sheriffs are appointed in other cases.—*Acts* 1808, c. 19.

No sheriff, constable, or other officer shall sell any goods or chattels by virtue of an execution, until he shall have advertised the same for sale ten days at least, in three public places in his county; one of which public places, if the defendant resides within the same county, shall be within the captain's district in which said defendant resides.

And every sheriff having an execution from any court of record, shall in addition to the above places, advertise the day of sale at the courthouse of his county.—*Acts* 1808, c. 20.

Sheriffs shall be subject to the same rules, regulations, and penalties, in their settlement with the acting wardens of their respective counties, as are prescribed for their settlements with county trustees. See *County Trustees.*—*Acts* 1808, c. 21.

The sheriff shall be entitled to two shillings, for summoning each juror and witness to attend on the premises, to try a petition for damages sustained by the erection of a public mill.—*Acts* 1809, c. 15.

See *Execution. Escape. Bail.*

SLAVES.

It shall not be lawful for any slave, on any pretence whatsoever, to go, range, or hunt on any person's land other than his master's, with dog or gun, or any weapon, unless there be a white man in his company, under the penalty of twenty shillings; to be paid by his master for every offence, to the owner

of the land whereon such slave shall range or hunt; and that no slave shall travel from his master's land by himself, to any other place, unless he shall keep the most usual and accustomed road: and if any slave shall offend contrary hereto, it shall be lawful for the owner of the land whereon any slave shall be found, to give him a severe whipping, not exceeding forty lashes.—*Acts* 1729, c. 5, § 7.

If any negro or negroes shall presume to travel in the night, or be found in the quarters or kitchens among other persons' negroes, such negroes so found shall receive correction, not exceeding forty lashes as aforesaid; and such negroes in whose company they shall be found, shall receive correction, not exceeding twenty lashes.—*Acts* 1729, c. 5, § 8.

Nothing above shall be construed to prevent any person from sending his slaves on his lawful business, with a pass in writing; nor to hinder neighbours' negroes intermarrying together, so that license being first had and obtained of their several masters.—*Acts* 1729, c. 5, § 9.

They shall be punished for mismarking or misbranding cattle, horses, and hogs, as mentioned under the title *Cattle, Horses, and Hogs*.

Also they shall be punished for removing, taking away, or turning adrift boats, canoes, and the like, as mentioned under the title *Boats, Canoes*, &c.

No free man or trader whatsoever, shall buy, sell, trade, barter, or borrow any commodities whatsoever, with, to, or from any slave, without the consent of the master, mistress, or owner of such slave, upon pain of forfeiting treble the value of the commodity or commodities so traded for, bartered, or sold; and also shall pay the sum of six pounds to the use of the said master, mistress, or owner; to be recovered in the court of the county where the offence shall be committed, by action of debt, plaint, or information. And if it shall so happen, that the person so offending shall not be able to pay treble the value of the commodities so traded for, sold, or bartered, and the sum of six pounds, such persons shall then be adjudged by the county court, to be sold as a servant for the same.—*Acts* 1741, c. 24, § 14.

If the master, mistress, or owner of such slave shall not, within six months after he or she shall have information or knowledge of such offence, prosecute the offender or offenders for the same, then it shall and may be lawful for any other person so to do, and to have and receive every advantage and benefit arising from such prosecution.—*Acts* 1741, c. 24, § 15.

If any free person shall either buy from or sell to any slave or slaves, any kind of goods or commodities whatsoever, or any other thing, without permission in writing, setting forth the identical article or articles such slave or slaves may have for sale, from the master, mistress, or other person having the management of such slave or slaves, every such free person shall on conviction forfeit and pay the sum of ten pounds, and be further liable to pay all damages that may accrue in consequence of such trading or trafficking; one half thereof to the person informing, the other half to the person injured: to be levied of his or her property as other recoveries by law. And if the offender shall not have sufficient property to satisfy the judgment, then such offender shall be committed to close custody, and shall remain in prison without bail or mainprize, for any time not exceeding three months.—*Acts* 1788, c. 7, § 1.

If any slave or slaves shall hereafter offer any article whatever for sale, without permission from his or her owner, master, or overseer, it shall or may be lawful for any person knowing the same, to apprehend such slave or slaves, and on due proof of the offence being made on oath before a justice of the peace of the county, he may order the said slave or slaves to receive any number of lashes, not exceeding thirty-nine, on his, her, or their bare back.—*Acts* 1788, c. 7, § 2.

It shall not be permitted for the master or commander of any vessel to entertain any slave, negro, or mulatto on board such vessel, at any time between sunset and sunrise, nor during the Sabbath day, except such slave, negro, or mulatto, as shall belong to the vessel, or shall have a pass from his, her, or their master or mistress, or from some justice of the peace, expressing the time when and the business for which they go on board. And if any slave, negro, or mulatto, who has not such pass, or is not statedly employed on board the vessel as one of the hands, shall be found on board the vessel in any bay, harbour, creek or river, within this state, on the Sabbath day, or in the night between sunset and sunrise, he shall be presumed to have been disposing of stolen goods. And the master or commander of such vessel, on complaint and conviction before any two justices of the peace, shall be subject to a fine for entertainment of such slave, negro or mulatto, of five pounds for the first offence, and ten pounds for every succeeding offence; to be applied as directed by acts of 1794, c. 4, §§ 6. See *Patrols*. But any person dissatisfied with the judgment of the said two justices, shall have the right of appealing to the court of the county, the determination whereof shall be final. The person appealing, to be subject to the same regu-

lations as in the cases of other person's appealing from the judgment of a justice.—*Acts* 1787, c. 6, § 1.

If any free negro or mulatto shall entertain any slave in his or her house during the Sabbath, or in the night between sunset and sunrise, he or she shall, for entertaining such slave, be subject to a fine of twenty shillings for the first offence, and forty shillings for every subsequent offence; to be recovered on conviction before any one justice of the peace, and to be applied as directed by acts of 1794, c. 4, § 6, (See *Patrols.*) saving to the party the same right of appealing as aforesaid. And in case the said free negro or mulatto shall not be able to pay the fine aforesaid, the constable who shall have attended at such conviction, shall hire out said free negro or mulatto to the person who shall take him or her for the shortest space of time for the payment of the said fine with costs; the said constable having previously advertised at least ten days at the door of the courthouse, and other public places of the said county, that such negro or mulatto would be hired out for the purpose aforesaid; and the person who shall hire such free negro or mulatto, shall be bound to pay at the time and place of such hiring, the amount of the fine with costs as aforesaid.—*Acts* 1787, c. 6, § 2.

If any person or persons whatsoever shall directly or indirectly tempt or persuade any negro or negroes, or other slave or slaves to leave his, her, or their master or mistress's service, out of an intent or design to carry or convey away him, her, or them out of this government; or shall harbour or conceal him, her, or them for that intent and purpose, and be thereof convicted, by his, her, or their own confession, or the oath of one credible witness, such person or persons shall by the two next justices of the peace, be committed to jail, or bound over to the next court to be held for the county where the offence shall be committed, and shall be prosecuted, by indictment, for the said offence; and being thereof lawfully convicted, shall by the said court be adjudged to pay to the master or mistress, for each negro or other slave so enticed or persuaded for the purpose aforesaid, the sum of twenty-five pounds; to be levied by order of the said court. But in case the party offending shall not be found worth lands, goods, or chattels to the value aforesaid, then the said court shall adjudge him, her, or them to serve the owner of such slave or slaves, or assigns, five years; and so deliver him, her, or them over to the master or mistress, or owner of such slave or slaves, so tempted or persuaded as aforesaid, and make record thereof. And if any person or persons shall so tempt and

practice with any negro or negroes, or other slave or slaves, and him, her, or them so tempted, shall actually convey away, or send out of this government, and be afterwards apprehended and convicted thereof, he, she, or they shall, by the said court, be severally adjudged and condemned as guilty of felony, and shall suffer accordingly.—*Acts* 1741, c. 24, § 27.

Any person or persons who shall hereafter steal, or shall by violence, seduction, or any other means, take or convey away any slave or slaves, the property of another, with an intention to sell or dispose of to another, or appropriate to their own use, such slave or slaves, or who shall hereafter by violence, or any other means, take or convey any free negro or free negroes, or persons of mixed blood, out of this state to another, with intention to sell or dispose of such free negro or free negroes, or persons of mixed blood, and being thereof legally convicted, or shall on his arraignment peremptorily challenge more than thirty five jurors, or shall stand mute, shall be judged guilty of felony, and shall suffer death without benefit of clergy.—*Acts* 1779, c. 11, § 2.

No slave shall go armed with gun, sword, club, or other weapon, or shall keep any such weapon, or shall hunt or range with a gun in the woods, upon any pretence whatsoever, (except such slave or slaves who shall have a certificate, as is herein after provided;) and if any slave shall be found offending herein, it shall and may be lawful for any person or persons to seize and take to his own use, such gun, sword, or other weapon, and to apprehend and deliver such slave to the next constable, who is enjoined and required, without further order or warrant, to give such slave twenty lashes on his or her bare back, and to send him or her home; and the master or owner of such slave shall pay to the taker up of such armed slave, the same reward as by this act is allowed for taking up of runaways.—*Acts* 1741, c. 24, § 40.

Nothing in this act shall be construed or extended, to prohibit or debar any master or owner of any slave or slaves within this government, from employing any one slave in each and every distinct plantation, from hunting in the woods on their master's lands with a gun, to preserve his or her stock, or kill game for his or her family.—*Acts* 1741, c. 24, § 41.

No slave shall have or carry a gun in any plantation where a crop is not tended, nor more than one in any plantation where there is crop tended, nor after crop is housed. And the master, mistress, or overseer, of any slave, with whom shall be found any gun, sword, or other weapon contrary to the true intent and meaning of this and the before recited act, shall

forfeit and pay to the person finding the same, the sum of twenty shillings; to be recovered by a warrant before any one justice of the peace for the county where the offence shall be committed, any punishment inflicted on the slave, forfeiture of the gun, sword, or other weapon, notwithstanding; unless such master, mistress, or overseer shall, by their own oath, or other proof, make appear that such slave carrying a gun, sword, or other weapon, was without their consent or knowledge.—*Acts* 1753, c. 6, § 3.

Such master or owner shall first deliver into the county court an account in writing of the name of any such slave to be employed as aforesaid; and the chairman of the court shall sign a certificate that such slave is allowed to carry a gun and hunt in the woods on his master or mistress's lands; and the master, mistress, or overseer of such slave shall give him the said certificate, which such slave shall always carry about him, on pain of being apprehended and punished as aforesaid. *Acts* 1741, c. 24, § 42.

No certificate shall be signed by any chairman of any county court, allowing any slave to carry a gun and hunt in the woods, unless the master, mistress, or manager of such slave, shall first enter into bond, with sufficient security, to the county court, either before, or at the time such certificate shall be given, for the good and honest behaviour of such slave; which bond may be assigned over to any person or persons who shall be injured by such slave; which assignee shall and may maintain an action thereon, and recover such damages as he or she shall or may sustain by such slave, in any court of record in this state, by action of debt, bill, plaint, or information.—*Acts* 1753, c. 6, § 2.

No slave shall go from off the plantation or seat of land where such slave shall be appointed to live, without a certificate of leave, in writing, for so doing, from his or her master or overseer, (negroes wearing livery excepted.)—*Acts* 1741, c. 24, § 43.

No slave shall be permitted on any pretence whatsoever, to raise any horses, cattle, or hogs; and all horses, cattle, and hogs, that shall belong to any slave, or of any slave's mark in this government, shall be seized and sold by the church wardens of the parish where such horses, cattle, or hogs shall be, and the profit thereof be applied, one half to the use of the said parish, and the other half to the informer.—*Acts* 1741, c. 24, § 44.

All horses, cattle, hogs, or sheep that, one month after the passing this act, shall belong to any slave, or be of any slave's

mark in this state, shall be seized and sold by the county wardens, and by them applied, the one half to the support of the poor of the county, and the other half to the informer. *Acts* 177-, c. 5, § 6.

Upon intelligence of any slave or slaves lying out, any two justices of the peace for the county wherein such slave or slaves is or are supposed to lurk or do mischief, shall, and they are hereby empowered and required to issue proclamation against such slave or slaves, (reciting his or their name or names, and the name or names of the owner or owners, if known,) thereby requiring him or them, and every of them, forthwith to surrender him or themselves; and also to empower and require the sheriff of the said county to take such power with him as he shall think fit and necessary, for the effectual apprehending such outlying slave or slaves; which proclamation shall be published on a Sabbath day, at the door of every church or chapel, or for want of such, at the place where divine service shall be performed in the said county, by the parish clerk, or reader, immediately after divine service. And if any slave or slaves against whom proclamation hath been thus issued, stay out and do not immediately return home, it shall be lawful for any person or persons whatsoever, to kill and destroy such slave or slaves, by such ways and means as he or she shall think fit, without accusation or impeachment of any crime for the same.—*Acts* 1741, c. 24, § 45.

If any number of negroes or other slaves, that is to say, three or more, shall at any time hereafter, consult, advise, or conspire to rebel, or make insurrection, or shall plot or conspire the murder of any person or persons whatsoever, every such consulting, plotting, or conspiring, shall be adjudged and deemed felony; and the slave or slaves convicted thereof, in manner hereinafter directed, shall suffer death.—*Acts* 1741, c. 24, § 47.

Every slave committing any crime or misdemeanor, shall be tried at the courthouse; and the court may take for evidence the confession of the offender, the oath of one or more credible witnesses, or such testimony of negroes, bond or free, with pregnant circumstances, as to them shall seem convincing.

Where any negro, mulatto, or Indian, bond or free, shall, upon due proof made, or pregnant circumstances, appearing before any county court within this government, be found to give a false testimony, every such offender shall, without further trial, be ordered by the said court, to have one ear nailed to the pillory, and there stand for the space of one hour, and the said ear to be cut off, and thereafter the other ear

nailed in like manner and cut off, at the expiration of one other hour; and moreover, to order every such offender thirty-nine lashes, well laid on, on his or her bare back, at the common whipping post.—*Acts* 1741, c. 24, § 50.

At every such trial of slaves committing capital or other offences, the first person in commission sitting on such trial, shall, before the examination of every negro, mulatto, or Indian, not being a Christian, charge such to declare the truth. *Acts* 1741, c. 24, § 51.

The master, owner, or overseer of any slave, to be arraigned and tried by virtue of this act, may appear at the trial, and make what just defence he can for such slave or slaves; so that such defence do not relate to any formality in the proceedings on the trial.—*Acts* 1741, c. 24, § 52.

Nothing above contained shall be construed, deemed, or taken, to defeat or bar the action of any person or persons, whose slave or slaves shall happen to be killed by any other person whosoever, contrary to the directions and true intent and meaning of this act; but that all and every owner or owners of such slave or slaves, shall and may bring his, her, or their action, for recovery of damages for such slave or slaves so killed.—*Acts* 1741, c. 24, § 55.

No slave shall hunt or range in the woods with a dog or dogs, except such as shall have a certificate for hunting, obtained as in this act directed. And if any slave shall be found offending herein, it shall and may be lawful for any person or persons to kill and destroy the said dog or dogs, and to bring the said slave before the next magistrate, who shall, on due proof of his offence, order the said slave such correction as he shall judge reasonable, not exceeding thirty lashes.—*Acts* 1753, c. 6, § 8.

In case any slave or slaves who shall not appear to have been clothed and fed according to the intent and meaning of this act, shall be convicted of stealing any corn, cattle, hogs, or other goods whatsoever from any person not the owner of such slave or slaves, such injured person shall and may maintain an action of trespass against the master, owner, or possessor of such slave, in the county court, and shall recover his or her damages, with costs of suit.—*Acts* 1753, c. 6, § 10.

[The feeding here spoken of is not less than one quart of corn a day.]

No negro or mulatto slave shall hereafter be set free, except for meritorious services, to be adjudged of and allowed by the county court, and license first had and obtained thereupon. And when any slave is or shall be set free by his or

her master or owner otherwise than is herein before directed; it shall and may be lawful for any freeholder in this state, to apprehend and take up said slave, and deliver him or her to the sheriff of the county, who, on receiving such slave, shall give such freeholder a receipt for the same; and the sheriff shall commit such slaves to the jail of the county; and the court of the county shall order all such confined slaves to be sold, during the term, to the highest bidder.—*Acts* 1777, c. 6, § 2.

The sheriff, upon committing any such slave or slaves, shall at least five days before such sale, give notice in writing to the last owner or owners, or reputed owner or owners of such slave or slaves, of the time and place of sale, and of the name or names of such slaves, to the end that such owner or owners may, if he or they think proper, make his or their claim to the same. But if such owner or owners shall neglect or refuse to appear on the day of sale, (due proof of the service of such notice being made to the satisfaction of the court,) such owner or owners so neglecting or refusing, shall be for ever barred from making any claim to such slave.—*Acts* 1777, c. 6. § 3.

No slave shall be set free in any case, or under any pretence whatever except for meritorious services, to be adjudged of and allowed by the county court, and licence first had and obtained therefor; and that such liberation, when entered of record, shall vest in the said slave, so as aforesaid liberated, all the right and privilege of a free born negro.—*Acts* 1796, c, 5, § 1.

If any slave hath been liberated contrary to the before recited act, entitled "An Act to prevent Domestic Insurrections," should be still within the limits of this state, and all slaves liberated after the passing of this act, should be known or suspected to be lurking in any of the inhabited parts thereof, then and in such case, on information made to any justice of the peace by any freeman, of such liberated slave or slaves going at large or lurking about, contrary to the true intent and meaning of the said act, then and in such case the justice to whom such information is made, is hereby empowered and required immediately to issue his warrant, directed to the sheriff of the county, commanding him to make diligent search and to apprehend all such slave or slaves, and to commit him, her, or them to the jail of the county, there to remain until the next succeeding court of the county; on which warrant all proceedings shall be regulated in the same manner as is directed by the before recited act; and that the person or per-

sons apprehending any such slave or slaves by virtue of any such warrant, shall be entitled to the emoluments as is allowed to freeholders by the before recited act. But nothing in this act shall be construed to debar any freeholder or freeholders from stepping forward in the execution of said law in the usual manner, or to divest them of the emoluments given by the said act.—*Acts* 1788, c. 20, § 1.

The nett proceeds of the money arising by such sale as aforesaid, shall be disposed of in the following manner, that is to say, one-fifth part thereof shall be paid to the takers up of such negroes or mulattoes, and the remaining part of such money shall be paid into the hands of the public treasurers, to defray the contingent charges of government, and to no other intent, use, or purpose whatsoever.—*Acts* 1777, c. 6, § 4.

Persons liberating slaves are to give bond;—for which, see *Free Negroes*, &c.

If any slave or slaves shall hereafter be allowed by his or her master, mistress, or overseer, or other person having the care of such slave or slaves, to hire out him or herself, such slave may be taken up by any magistrate or freeholder, and kept to hard labor, for the use of the poor of the county, for any time not exceeding twenty days.—*Acts* 1777, c. 6, § 5.

It shall not be lawful, under any pretence whatever, for any person or persons to allow his, her, or their slave, or any slave under his, her, or their command or direction, to hire his, her, or their time, under the penalty of forfeiting the sum of twenty pounds for each and every offence; to be recovered before any justice of the peace, to the sole benefit of the party prosecuting. And it shall be part of the duty and charge of the grand jury, both in the county and superior courts, to make presentment of any slave who shall be permitted by his or her master or mistress to go at large, having hired his or her time; and on such presentment being made, this court shall issue an order to the sheriff of the county where such negro may be, to take up such negro, and him safely secure, so that he can have such negro before the next county court. And it shall be the duty of the sheriff to give the owner notice thereof, (if residing within the district,) at least ten days before the sitting of the court; and the said court shall empannel a jury to enquire into and try the truth of such presentment, on which trial or inquiry the owner may produce evidence as in other cases; and if the jury shall find that the said presentment is true, such negro shall then be hired out by the sheriff of the county, at public vendue, for the space of one year, taking

bond with security for the same, payable to the Wardens of the Poor, for the use of the poor of said county, subject to the payment of any charges respecting said negro. But when the owner resides out of the district, the Sheriff shall give notice by advertisement in the nearest gazette, for at least two weeks, where a gazette shall be published in the district in which the Sheriff shall live; but in other cases the Sheriff shall advertise the same at the court-house of the county in which the said slave shall be presented or shall be taken up. But when any person who shall hire the negroes of an orphan, shall hire to such slave his or her time, the slave shall only be hired out under this act, for such time, or the remainder of the time, as said slave may have been hired to such person. —1794, ch. 4, sec. 1.

Any person who shall hereafter entice or persuade any servant or slave to absent himself or herself from his or her own's service, or who shall harbour or maintain, under any pretence whatever, any runaway servant or slave, shall for every such offence, forfeit and pay to the owner of such servant or slave, the sum of fifty pounds: to be recovered by action of debt before any jurisdiction having cognizance thereof, and to be further liable to the said owner in an action for damages. —1791, ch. 4, sec. 4.

Where any slave or slaves shall hereafter commit any misdemeanor or offence which is not by law declared capital, and which in the opinion of the Justice or Justices before whom such offending slave may be carried for examination, shall appear to be of so trivial a nature as not to deserve a greater punishment than a single Justice of the Peace is by this act empowered to inflict, such Justice shall, and he is hereby authorised and empowered forthwith to issue *Subpœnas* if necessary, to compel the attendance of witnesses, and proceed immediately upon the trial of such slave in a summary way, and to pass sentence and award execution; provided the punishment extends no further than by ordering the offender to be publicly whipped not exceeding forty lashes: and where the offence for which any slave shall be apprehended, shall appear to the Justice or Justices to be of such a nature as to deserve any other or greater punishment, such offending slave shall be committed to gaol, and stand his or her trial by a court in the way prescribed by the afore recited act.—1783. ch. 14, sec. 2.

Upon all trials of slaves before any Justice of the Peace, for any misdemeanor under this act, any other of the Justices

of the county where such slave may be upon trial, may, if they think proper, sit upon and assist in the examination and trial.—*Ibid.* sec. 3.

Every person who shall introduce into this state any slave or slaves after the passing hereof, from any of the United States which have passed laws for the liberation of slaves, shall on complaint thereof before any Justice of the Peace, be compelled by such Justice to enter into bond with sufficient surety in the sum of fifty pounds current money for each slave, for the removing of such slave or slaves to the state from whence such slave or slaves were brought, within three months thereafter; the penalty whereof shall be recovered, one half for the use of the state, the other for the use of the prosecutor, on failure of a compliance therewith; and the person introducing such slaves shall also in case of such failure, forfeit and pay the sum of one hundred pounds, to be recovered by any person suing for the same, and applied to his own use.—1786. ch. 5, sec. 6.

When any slave shall be tried in any of the counties aforesaid, (counties in which executed slaves are paid for,) and shall be found guilty by the jury, of any crime, the punishment whereof shall extend to life, the said jury shall fix and ascertain the value of the said slave, and shall give the said valuation in at the time they return their verdict; which said valuation shall be certified by the Chairman of the court and given to the owner of the said slave, who shall be entitled to receive two thirds of such valuation from the Sheriff of any of the said counties in which such slave may have been executed. —1796. ch. 27, sec. 1.

When any slave shall be legally outlawed in any of the counties within mentioned, the owner of which shall reside in one of the said counties, and the said slave shall be killed in consequence of such outlawry, the value of such slave shall be ascertained by a jury which shall be empannelled at the succeeding court of the county where the said slave was killed; and a certificate of such valuation shall be given by the Clerk of the court to the owner of said slave, who shall be entitled to receive two thirds of such valuation from the Sheriff of the county wherein the slave was killed.—*Ib.* sec. 2.

The jury who shall try and return the valuation of any negro by them convicted and valued, shall previously enquire whether the owner of the said slave did or did not feed, clothe and treat him or her with the humanity consistent with his or her situation, except such slave was the property of orphans or minors, which, if not proven to their satisfaction, that the

owner or owners of the said slave did feed, clothe or treat him or her in manner aforesaid, then and in that case, the owner or owners shall not be entitled to the benefit of this act.—*Ib.* sec. 3.

The courts of the several counties aforesaid respectively, shall be, and they are hereby authorised and required when necessary, to lay a tax on all black polls, in any of the said counties where the owner or owners of any slaves shall be entitled to receive pay for the same under this act, sufficient to defray the charge of any of the said counties which shall be made by the owner or owners of any slave under this act; and the Sheriff of the said counties respectively, shall collect such tax under the same rules and regulations as are prescribed for the collection of county taxes, and shall pay to the owner or owners of the slave or slaves valued under this act, when collected, two thirds of the valuation, which shall be certified by the Chairman of the court where the same was valued; which certificate together with the owner's receipt, shall be a sufficient voucher for him in the settlement of his account with the court; and the said Sheriff shall account with the court of his county for any surplus money which shall remain in his hands after paying the certificate or certificates, which shall be obtained and paid under this act; which said surplus shall be received by the said court for the purpose of discharging any similar claim that shall be made for the value of any slave under this act. But this act and no part thereof shall have effect or be construed to extend to any county in this state not herein particularly mentioned and expressly named, or to negroes belonging to persons living out of this state.—*Ib.* sec. 4.

The force, meaning and intent of the act last aforesaid, made for the counties of Bladen, Halifax, Granville, Cumberland, Perquimans, Beaufort and Pitt, shall be extended to the counties of Warren, Onslow, and Chatham, under the same rules, regulations and restrictions in every respect whatsoever, as fully as if they had been mentioned in the said act; and the courts respectively of the counties of Warren, Onslow and Chatham, shall take notice and be bound by the same accordingly; any thing to the contrary notwithstanding.—1797, ch. 12, sec. 1.

It shall not be lawful for any merchant or trader within this state to harbor or trade with any slave, free negro or mulatto in their store houses, shops or tenements wherein they keep goods and merchandize, at any time between sun set and sun rise, or on the Sabbath day, without a pass from his, her or

their master, mistress, or overseer, or from some Justice of the Peace, expressing the time when and the business for which they go. Any person so offending shall be subject to the same fine and penalties, to be recovered and applied in the same manner as the fines and penalties on owners and masters of vessels in the act herein recited.—1791. ch. 4, sec. 1.

If any slave shall be guilty of producing a forged free pass or certificate, he or she so offending, shall on conviction, suffer such corporeal punishment as a court shall inflict, (death excepted,) to be tried in the same manner as slaves are tried for other capital offences.—*Ib.* sec. 2.

If any person shall hereafter be guilty of wilfully and maliciously killing a slave, such offender shall upon the first conviction thereof be adjudged guilty of murder, and shall suffer the same punishment as if he had killed a free man. But this act shall not extend to any person killing a slave outlawed by virtue of an act of Assembly of this state, or to any slave in the act of resistance to his lawful owner or master, or to any slave dying under moderate correction.—*Ib.* sec. 3.

If any master or commander of any ship or vessel trading within this state, shall carry and convey out of the same on board of any such ship or vessel, any negro or mulatto slave or slaves, the property of any citizen or citizens of this state, without the consent in writing of the owner or owners, his, her or their guardian or guardians, of such slave or slaves previously obtained; or shall take and receive on board of any such vessel or ship, any such slave or slaves, or permit or suffer the same to be done with the intent and for the purpose of carrying and conveying such slave or slaves out of this state, or shall wickedly and willingly conceal or permit to be concealed on board of any such ship or vessel, any negro or mulatto slave or slaves, who shall or may hereafter abscond from his, her or their master or mistress, being citizens of this state, with the intent and for the purpose of enabling such slave or slaves to effect his, her or their escape out of this state; every such master or commander of any such ship or vessel so carrying and conveying, or so taking or receiving or concealing, or causing or permitting the same to be done with an intent as aforesaid, shall be deemed and taken to be guilty of felony, and shall suffer death, as a felon, without benefit of clergy.—1792. ch. 5, sec. 1.

In all cases hereafter happening, where any slave shall be accused of an offence, the punishment whereof shall extend to life, limb or member, such slave shall be entitled to trial by jury, on oath, consisting of twelve good and lawful men, own-

ers of slaves, in a summary way, and in open court of the county wherein such offence was committed. *Provided nevertheless*, That if the court of the county shall not meet within fifteen days from the time of the commitment, the Sheriff of the county shall and may summon three Justices of the Peace of the said county, and a jury of good and lawful men, owners of slaves, who shall have as full and ample power and authority to try and pass sentence on any slave accused and brought to trial before them, as the county court might or could have by virtue of this act. *And provided always*, That the said jury and three Justices shall not be connected with the owner of such slave, or the prosecutor, either by affinity or consanguinity.—1793. ch. 5, sec. 1. But see Act of 1807, ch. 10, hereinafter recited.

When a slave shall be apprehended for any offence, the punishment whereof may affect life, member or limb, it shall be the duty of the Sheriff, and he is hereby required, to serve the owner of such slave, if known, with notice of trial ten days previous thereto, (which notice shall be proved to the court,) in order that the owner may have an opportunity of defending the said slave; and the costs of said notice, and all other costs attending the trial of any slave so apprehended, where the owner or owners shall be known, shall be paid by the said owner or owners, provided the said slave, if a freeman would be liable to the payment thereof. And in case of refusal to pay the same, process may issue from the Clerk of the court to compel payment, in the same manner as for other costs.—*Ib.* sec. 2.

When the owner of any slave to be tried by virtue of this act, shall not be known, or cannot be discovered or ascertained, or shall reside out of this state, it shall and may be lawful for the court, and they are hereby authorised and required, to appear for and in behalf of the prisoner, who shall be allowed the same fees as the Attorney for the state is allowed for criminal prosecutions. After which they may proceed to trial in the same manner as if the owner had been notified agreeable to the directions of this act: in which case, the fees of the counsel, clerk and Sheriff, shall be paid by the county in which the court is held, in the same manner as other county charges.—*Ibid.* sec. 3.

It shall hereafter be the sole duty of the jury sworn on the trial of any slave or slaves, to give a verdict of guilty or not guilty, on the evidence submitted to them by the court; and on the verdict so given in by the jury, it shall be the duty of the county court, when sitting on the trial of any slave or slaves,

or of three Justices when they shall be sitting on any such trial, to pass judgment and sentence on the slave or slaves so tried before them, agreeably to the verdict of the jury and the laws of the country.—1794. ch. 11. sec. 1.

If any free person of colour shall come into this state by land or water, or any slave shall hereafter be emancipated, he she or they shall be compelled to give bond and security to the Sheriff, payable to the Governor for the use of the state, in the sum of two hundred pounds, for his her, or their good behaviour, during the time he, she or they may remain in this state; and it is declared to be the duty of the Sheriff to apply to the above described persons, and take from them a bond as aforesaid; and if any person so applied to should refuse to give such bond, the Sheriff of the county where the person so applied to for the time being resides, shall be and is hereby authorised and directed, to take him, her or them into custody, and confine them and every of them in the gaol of the county until the ensuing court, when it shall be the duty of the said court to empannel a jury to enquire whether the person so confined comes within the meaning and purview of this act; and if the said jury shall find that such person does come within the meaning of this act, then and in that case the court shall compel such person to give bond as aforesaid for his, her or their good behaviour; and upon failing so to do, the court shall order such person to be sold, for the benefit of the state, at public auction.—1795. ch. 16, sec. 8.

When any number of negroes, or other slaves, or free people of colour, shall collect together in arms, and be going about the country, committing thefts and alarming the inhabitants of any county, it shall be duty of the commanding officer of such county, or captain of a troop of horse, upon three or more Justices of the Peace requiring the same, immediately to call out a sufficient number to suppress such depredations or insurrections; which detachment of militia shall be under the same rules and regulations, as in cases of invasion and insurrection, and shall be entitled to receive the same pay and rations as the troops of the United States, when in actual service; and if any person shall be wounded or disabled in suppressing such insurrection, he shall be provided for at the public expense, in the same manner as heretofore practised in this state. *Provided nevertheless,* That if the officer above mentioned shall fail or neglect to order out a detachment of the militia in the above directed cases, his superior officers may, upon sufficient proof being made of the necessity of such a measure, order him or any other officer under his command,

to suppress such depredation or insurrection; and if the persons so ordered shall fail to obey the same, they shall suffer as in cases of insurrection and invasion.—*Ibid.* sec. 5.

When any two Justices of the Peace shall know, or have any reason to believe, that any conspiracy hath taken place to promote insurrection among the slaves or people of colour, or that there may be danger of such measures taking place, it shall be their duty to issue an order to the Sheriff of the county or his deputy, to summon the magistrates of the county to meet at the court-house on some day fixed by said order, which it shall be the duty of the Sheriff to obey; and if a majority of the magistrates present shall be of opinion that such combination exists, or that there may be danger of an insurrection, they shall immediately by express, make a representation thereof to the Governor of the state for the time being; and the Governor shall by warrant, order the expense of said express to be paid out of the treasury.—1798. ch. 6, sec. 1.

When the Governor shall receive such representations made as aforesaid, he shall be, and is hereby authorised to issue orders for a patrol of the militia, with such instructions to the commanding officer, or other officer of the county, as the exigency of the case may require —*Ibid.* sec. 2.

When application shall be made to the commanding officer of the county, or other officer of the militia, under the act passed in the year one thousand seven hundred and ninety-five, it shall be the duty of such officer to report the same immediately to the Governor for the time being, who shall thereon take the necessary measures, by ordering out a sufficient body of the militia to preserve and insure the public safety, who shall when ordered out as aforesaid, be governed by the before recited act.—*Ibid.* sec. 2.

The wardens of the poor in the several counties in this state, or any of them, shall have power and authority, on application to them made that any person or persons are about to remove themselves out of the county, and have any slave or slaves that are likely to become a county charge, to issue their or his warrant to bring such person or persons before him or them, and take such security by bond as may be sufficient to indemnify the parish or county; which bond shall be made payable to the chairman of the county court and his successors. And in case such person or persons shall refuse to give such bond, he shall have power to commit the said person or persons, and keep him or them committed until he or they shall enter into such bonds, or remove the slave or slaves so about to be left, without the limits of the county.—1801. ch. 20.

If any person shall hereafter be guilty of feloniously, wilfully and maliciously killing any slave, such offender, upon conviction thereof, on being arraigned stands mute, or challenges peremptorily more than 35 jurors, shall suffer death without benefit of clergy.—*Ibid.* c. 21.

If any number of negroes and other slaves, shall, at any time hereafter, consult, advise or conspire to rebel or make insurrection, or shall plot or conspire the murder of any person or persons whatsoever, every such consulting, plotting or conspiring, shall be adjudged and deemed felony, and the slave or slaves convicted thereof in the manner prescribed by law, shall suffer death, or be transported as herein after provided.

If any negro or other slave shall be found in a state of rebellion or insurrection, or shall agree to join any conspiracy or insurrection, or shall procure or persuade others to join or enlist for that purpose, or shall knowingly and wilfully aid or assist any slave or slaves in a state of rebellion, or engaged in a conspiracy to make insurrection, as by furnishing or agreeing, or promising to furnish such persons with arms, ammunition, or any other article for their aid and support, every slave so offending, and being thereof lawfully convicted, shall be adjudged guilty of felony, and shall suffer death, or be transported, as herein after provided.

If any free person shall join in any conspiracy, rebellion or insurrection of the slaves, or shall agree to join in any such conspiracy, rebellion or insurrection, or shall procure or persuade others to join or enlist for that purpose, or shall knowingly and wilfully assist any slave or slaves in a state of rebellion, or engaged in a conspiracy to make insurrection, as by furnishing or agreeing or promising to furnish such slaves with arms, ammunition, or any other articles for their aid and support, every free person so offending, and being thereof lawfully convicted, shall be adjudged guilty of felony, and shall suffer death without benefit of clergy. In all cases wherein a slave shall hereafter be prosecuted for the offences described in this act, the court may take for evidence the oath of one or more creditable witnesses, the confession of the offender, freely given without any undue influence, either by terror or persuasion, or the testimony of a negro or other person of colour, bond or free: but in all cases where the testimony of one negro or person of colour shall be admitted, the same shall not be deemed conclusive and sufficient to convict the person charged, unless the same shall be supported by such pregnant circumstances as to the jury on such trial shall appear convincing.

proof when taken together with the testimony of such negro or person of colour.

In all cases of conspiracy, rebellion or insurrection by the slaves, when a sufficient example has been made, by the conviction and execution of any number concerned in such rebellion or insurrection, the court before whom the slave or slaves shall be convicted, shall have full power to commute the punishment of death for transportation out of the state, and beyond the limits of the U. States, under such restrictions and upon such conditions as good policy and public safety at the time shall require.

Whenever a slave shall be transported in consequence of the provisions of this act, either by the owner or the state, and such slave shall ever thereafter, voluntarily return to and be in the state, such slave shall suffer death in pursuance of the original sentence passed against him, on proof of his identity in the usual form of law; and if such slave shall be brought into any county in this state by his or her master or mistress, or by any other person, such slave, shall be forfeited (on proof thereof) to the county into which the same may be brought, which slave shall be again transported by order of the county court, and sold for the use of the county.

It shall be the duty of any commissioned officer of the militia of this state, on application or order of any two or more Justices of his county, to order out the militia under his command, or such part thereof as may be necessary to detect and suppress such conspiracy, rebellion or insurrection of the negroes or other slaves; and the militia so raised, shall perform such duty and services as they shall be required to do by their commanding officer, and shall appear furnished with arms, ammunition and accoutrements, and shall receive the same pay and rations as is directed by the laws now in force,

The Governor is hereby authorised and required, in all cases of conspiracy or insurrection, to take such measures for the detection or suppression of the same as the public safety at the time may require.—1802, c. 17.

If any master or owner of any vessel or boat, or any other person belonging to, or on board of any vessel or boat, lying or being within any river, bay, harbor or creek, within this state, shall buy, sell, or carry on any kind of trade or merchandize with any slave or slaves, without permission from the master, mistress or owner of such slave or slaves, such master or owner, or other person, so buying, selling, or carrying on trade or merchandize, shall, for every such of-

The sheriff having a justice of the peace's warrant directed to him, shall execute the same; but he need not go in person to execute the same, but may authorise another to do it.

It is no excuse to the sheriff to return that he could not execute a precept because of resistance, or kept off by force and arms, or the like; for he may take with him the power of the county; and he shall be, for making such a return, upon the spot, absolutely amerced.

Over and above the usual bonds directed by law to be given by sheriffs, each sheriff before he enters into office, shall give a distinct bond, with two securities to be approved by the court of pleas and quarter sessions, in the sum of 2000*l.* to the governor, conditioned for the due collection, payment and settlement of the public taxes; which bond, after having duly recorded the same, the clerk of each county court is directed to forward to the treasurer of the state, together with a list of the taxable property of the county.—*Acts* 1784, c. 2.

Every sheriff hereafter appointed, shall enter into bond with sufficient security, payable to the chairman of the court, for the time being, and his successors in office, for the due collection and accounting for the county and poor tax, as well as the public tax; which said bond shall be executed previous to his entering on the execution of his office.—*Acts* 1798, c. 30.

When any sheriff, constable, or clerk of any court within this state shall, by virtue of his office, receive any sum or sums of money for or on account of any person or persons whatsoever, and shall not on application made to him, pay the same, such person or persons may give to such sheriff, constable or clerk, ten days' notice in writing, to be proved in the usual manner, to appear before some justice of the peace of the county, to show cause why the justice should not grant judgment and issue execution for the same against him and his securities. And if such sheriff, constable, or clerk shall not appear before such justice, or if appearing, does not show sufficient cause to the contrary, it shall be lawful for such justice to enter up and grant judgment and award execution against such delinquent for the money due. Provided however, the sum does not exceed the jurisdiction of a justice of the peace out of court.—*Acts* 1800, c. 18.

The remedy in the above case shall be by warrant against the said officer and his securities, either while he is in office or afterwards, to the amount of the justice's jurisdiction.—*Acts* 1802, c. 18.

No person shall be re-elected sheriff, who does not, at the time by law appointed for choosing a sheriff and before the vote shall be taken, produce to the court, receipts from the public treasurer, county trustee, and wardens of the poor for the time being, in full of all monies by him collected, or which ought to have been by him collected, for the use of the state and county, and for which he shall have become accountable. *Acts* 1806, c. 8.

It shall be lawful for a sheriff to vacate his office by resigning the same to the court of pleas and quarter sessions of his county, (a majority of the acting justices being present and accepting of such resignation) and thereupon the said court may proceed to appoint a proper person as sheriff until the next annual election, under the same rules, regulations, and restrictions as sheriffs are appointed in other cases.—*Acts* 1808, c. 19.

No sheriff, constable, or other officer shall sell any goods or chattels by virtue of an execution, until he shall have advertised the same for sale ten days at least, in three public places in his county; one of which public places, if the defendant resides within the same county, shall be within the captain's district in which said defendant resides.

And every sheriff having an execution from any court of record, shall in addition to the above places, advertise the day of sale at the courthouse of his county.—*Acts* 1808, c. 20.

Sheriffs shall be subject to the same rules, regulations, and penalties, in their settlement with the acting wardens of their respective counties, as are prescribed for their settlements with county trustees. See *County Trustees.*—*Acts* 1808, c. 21.

The sheriff shall be entitled to two shillings, for summoning each juror and witness to attend on the premises, to try a petition for damages sustained by the erection of a public mill.—*Acts* 1809, c. 15.

See *Execution. Escape. Bail.*

SLAVES.

It shall not be lawful for any slave, on any pretence whatsoever, to go, range, or hunt on any person's land other than his master's, with dog or gun, or any weapon, unless there be a white man in his company, under the penalty of twenty shillings; to be paid by his master for every offence, to the owner

who, after taking the following oath, [which see under Oaths] before the Ranger (who is authorised to administer the same) or some Justice of the Peace for the county where such stray or strays shall be taken up, shall view and appraise such stray or strays, and make return thereof to the said Ranger, under their hands and seals; which appraisement, with a particular and exact description of the marks, brands, age, and colour, as near as can be ascertained, of each and every such stray or strays together with the time of taking up, and place of abode of the person taking up the same, shall by such Ranger be entered in a book to be by him kept for that pupose, and shall, during the sitting of the next succeeding court in the county where such entry shall be made, put up an advertisement in the most public place, describing therein the kind, marks, brands, and colour of all strays entered as aforesaid.

The property of every stray horse, mare, gelding or colt, neat cattle, hog or sheep, twelve months after such appraisement, and no property proved by the owner thereof, shall be deemed to be vested in the person taking up the same.

It shall and may be lawful for the former owner of any such stray or strays, at any time within twelve months after such appraisement as aforesaid, on proving his property to the same, by his own oath or otherwise, to demand and recover such stray or strays, or the valuation thereof, the claimant first paying the Ranger's fee, and the reward for taking up the same.

Where the taker up of any stray shall have been at any expense for keeping and maintaining such stray, it shall be lawful for him to retain the same until the owner or claimer thereof shall pay all such expense; which expense shall be ascertained in the following manner, to wit, the taker up shall obtain from some Justice of the Peace a warrant, empowering three freeholders, by the said Justice to be named, to declare on oath, upon view of the said stray, and examination of witnesses if necessary, how much the said taker up ought to demand for the keeping and maintenance of the stray; and such sum as shall by the said freeholders, or any two of them, be so declared, shall be the sum which the taker up is and shall be entitled to demand and receive, before the owner or claimer can take the stray out of his possession.

After the expiration of twelve months, each and every person so taking up any stray or strays, and no property proved by the owner thereof, shall account for and pay into the hands of the County Trustee, two third of the appraised value of all such stray or strays, after deducting the Ranger's fee, and the

reward for taking up the same; and in case any person so taking up any stray or strays, shall neglect or refuse to account with the said County Trustee, he or she so failing, shall forfeit and pay double the appraised value of such stray or strays by him or her so taken up, to be recovered by action of debt; before any jurisdiction having cognizance thereof, one half to the person suing for the same, and the other half to the use of the county wherein such stray or strays may be taken up;—which said County Trustee is authorised and required to receive and account for the same, in the same manner, and under the same regulations and restrictions, as other county monies; which said money shall be applied to the use of the county where such stray or strays shall be so taken up.

It shall and may be lawful for the former owner thereof, at any time, on proving his property by the oath of one or more indifferent witnesses, to demand and receive from the County Trustee, two thirds of the appraised value of all such stray or strays so accounted for as aforesaid, deducting therefrom the Ranger's fee, the reward for taking up, and the County Trustee's commissions of two and a half per cent. for receiving and accounting for the same.

If after the appraisement of any stray horse, mare, gelding, or colt, and entry thereof made with the Ranger as aforesaid, such stray should happen to die within the space of six months after such appraisement, the person taking up such stray or strays shall not be answerable for the same, unless such death appears to have been occasioned by ill usage or abuse.

If any person, not being a freeholder, shall presume to take up any stray horse, mare, gelding, or colt, neat cattle, hog or sheep, or if any freeholder shall take any such stray or strays at any other place than on his own land, or shall make use of any such stray or strays before the same shall be appraised as aforesaid, he or she so offending, shall for every such offence, forfeit and pay the sum of five pounds, to the use of the informer; to be recovered with costs before any jurisdiction having cognizance thereof, and be further liable to the action of the party grieved; but this shall not extend to prevent any person from taking up any stray or strays of any kind, and carrying the same immediately to the owner thereof.

For the more speedy recovery of strays, it shall and may be lawful for any person, at all times, to look over and search the entry books to be kept by the Ranger in each county in this state, for any information he may want as to any horse, mare, gelding or colt, neat cattle, hog or sheep, which heretofore has, or hereafter may stray away from the owner thereof, the per-

son requesting such search first paying one shilling therefor to the Ranger keeping such book.—*Acts* 1777, c. 9.

Every Ranger shall make return of the strays by him entered, to his county court which shall happen after the first day of February in each and every year, under the penalty of 10*l.* to the use of the county, to be recovered before any Justice of the Peace, by the County Trustee under the direction of the court; which return the Clerk of the Court shall copy and deliver the same to the County Trustee.—1798, c. 11.

In future any person taking up a stray, shall give bond in a sum at least double the sum which may be deemed the value of such stray, with approved security, to the Ranger of the county wherein such stray shall be taken up, for his or her faithful compliance with the act of 1777, c. 9, by delivering up the stray to the owner (if claimed in due time) or otherwise accounting with the County Trustee as by law directed. And the taker up of every stray shall pay to the Ranger with whom he may enter the beast, the sum of 2s. for his trouble in writing the bond, which shall be repaid him by the owner receiving said stray. Provided, that if the value of such stray shall not exceed 40s. then no bond shall be required.—1799, c. 32.

Every person taking up a stray, and such stray being reclaimed by the owner, or dying as aforesaid, such taker up shall produce to the Ranger of the county, a certificate of the same from some Justice of the Peace of his county, within twelve months after entering such stray, which certificate the Ranger shall note in his book and file in his office, and shall give a receipt for the same, specifying the date of the entry of such stray. And in case any taker up of a stray shall fail or neglect to produce a certificate as aforesaid, he or she so failing or neglecting, shall be subject to the payment of all costs which may accrue in consequence of any suit which shall be brought against him or her, as fully as if no claim had been made, or death happened.—1801, c. 32.

The respective county courts in this state, shall or may appoint one or more Rangers for their counties respectively, under the same rules, regulations and restrictions, as already prescribed by law.—1808, c. 18.

Every person who shall hereafter take up any horse, gelding, colt or mule, as a stray, shall at the same time he gives notice to the Ranger agreeably to the provision of existing laws, pay to the Ranger in addition to the fees already required to be paid, the sum of one dollar for the purpose of having such stray advertised as herein after directed; and it shall be the duty of the Ranger immediately after he shall be furnished with the

appraisement of the persons appointed to value the stray, to cause an advertisement to be published for at least two weeks in the paper printed by the Printer of the State, containing an accurate description of the stray as entered upon his book, the appraised value of the same, and the name and place of residence of the taker up; which sum of one dollar the owner shall repay to the taker up at the time of receiving his stray. Provided always, That if the owner of any stray horse, mare, gelding, colt, or mule, taken up as aforesaid, shall not prove his property within twelve months, the taker up shall be allowed one dollar in his settlement with the County Trustee, over and above the fee allowed by law for taking up strays.—1815, c. 9.

SUICIDE, OR SELF MURDER.

A *Felo de se*, is he that deliberately puts an end to his own existence, or commits any unlawful malicious act, the consequence of which is his own death—as if attempting to kill another, he runs upon his antagonist's sword: or, shooting at another, the gun bursts and kills himself. The party must be of years of discretion, and in his senses, else it is no crime.—But this excuse ought not to be strained to that length, to which our Coroners' juries are apt to carry it, *viz.* that the very act of suicide is an evidence of insanity—as if every man, who acts contrary to reason, had no reason at all: for the same argument would prove every other criminal *non compos*, as well as the self-murderer. The law very rationally judges, that every melancholy or hypochondriac fit does not deprive a man of the capacity of discerning right from wrong; which is necessary to form a legal excuse. And therefore, if a real lunatic kills himself, in a lucid interval, he is a *felo de se* as much as another man.

This offence is punished by an ignominious burial in the highway, with a stake driven through the body. But it causes at this day no forfeiture of goods and chattels by our law, as formerly it did.—4 *Bla. Com.* 189.

SUNDAY—*See Vice and Immorality.*

It shall not be lawful for any Sheriff, or other officer, to execute any writ or other process upon a Sunday, and all such service of process shall be void; except the process be issued

for treason, felony, riot, rescous, breach of the peace, or upon an escape out of prison or custody, for such process may be executed at any time or place.

SURETIES—See *Debt and Debtor.*

SURETY FOR THE GOOD BEHAVIOR—See *Behavior.*

SURETY FOR THE PEACE—See *Behavior.*

SURVEYOR.

At the next Court which shall be held after each vacancy, the Justices of the county court shall elect a Surveyor, by a majority of the votes of the Justices then present, who shall hold his office during good behavior.

Before entering upon the execution of his office, he shall take and subscribe in open court, the oath prescribed for the qualification of officers, and also an oath that he will well and impartially discharge the duties of his office; and he shall enter into bond, with sufficient security to be approved by the county court, in two thousand pounds, to the Governor and his successors, for the faithful discharge of his duty; which shall be renewed as under BONDS.

It shall and may be lawful for each and every Surveyor in this State, in his respective county, to appoint a deputy or deputies. who shall previous to entering on the execution of his office, be qualified in a similar manner with the Surveyor; and the Surveyor making such appointment shall be liable and accountable for the conduct of such deputy or deputies, in the same manner as for his own conduct in office.

See *Entries, Land Grants and Deeds, &c.*

SWEARING AND CURSING.

It seems that this is an offence at common law, as being against morality; and may be indicted, where the party, by a common practice of swearing and cursing, shall justly incur the character of being a profane and common swearer; but for any single act of swearing and cursing, he must be proceeded against as under VICE AND IMMORALITY.

All profaneness is punishable at the common law by fine and imprisonment.—*Wood* 409. *Strange* 834. *Hayw. Justic*

TAXES.

The last 20 working days in July in every year, are established as the time when the lists of taxable property shall be taken in every county in the State.

At the respective courts of pleas and quarter sessions in each county, which shall first happen after the first day of April in every year, the justices for taking the lists of taxable property shall be appointed, one for each district, and the clerks of the several courts aforesaid, shall give notice thereof—1st. by advertising the same at the court-house, during the term at which the appointments are made, stating therein the names of the said justices and the districts for which they were appointed; and 2dly, by issuing notices of such appointments to the sheriff of the county, who shall serve the same within ten days, on the justices so appointed, and it shall be the duty of the justices so appointed to advertise in their respective districts, at three different places, at least ten days before the days herein established for giving in the list of taxables, the place whereat he will attend to receive the same; and if any justice of the peace shall fail to take and return said list of taxable property according to law, it shall be the duty of the county court to which the said return should have been made, to appoint some other justice of the peace whose duty it shall be to take the list in said district, and to make return thereof to the succeding county court.

The justices appointed as aforesaid, shall deliver to the constables of their respective districts, for which they are appointed, within 5 days after the time herein before established, a copy of the names of the persons who have given in their lists of taxables, together with a warrant directed to the said constable, commanding him to make diligent enquiry for, and to summon every person in his district, liable to pay public taxes, and who had failed to make return on the days herein prescribed, to appear before such justice within ten days, and make return of his list of taxables. And the constable shall have and receive for the service of said warrant, and making return of the same, with the names of such persons as he shall have summoned, thereon, annexed to, or endorsed on said warrant, the sum of two shillings for each person by him so summoned and returned, and is empowered to demand and receive the same: provided, that on every return so to be made by the constable, the justice shall administer to him, an oath, in the following form, to wit: "You A. B. do solemnly swear, that the persons whose names you have returned on this warrant, are inhabitants of the district for which you are

appointed constable, and are liable to pay taxes, to the best of your knowledge and belief; and that you have duly summoned each and every of them, agreeable to the directions of this warrant: So help you God."

Every person whose name is so returned, who shall fail to deliver or cause to be delivered to the justice appointed for the district, his list of taxable property within the ten days aforesaid, shall forfeit and pay a two-fold tax on his own poll, and on all and every article of taxable property he possessed, in the county wherein he resides, or in any other county where he fails to give in, on the first day of April preceding; sickness or some unavoidable accident excepted, which if offered as an excuse to the court of the county, may by them be judged of. And every constable who shall neglect or refuse to perform the duties hereby required, shall forfeit twenty pounds for every neglect or refusal, to be recovered by the treasurer or trustee of the county, for the use of the county.

At the court which shall happen first after the expiration of the term of ten days aforesaid, every justice appointed as aforesaid, shall make return of the list by him so taken, and a return of the names of such persons as are liable to pay the two-fold tax, agreeable to the constable's return, and also the name of the constable.

All property in the several counties liable to pay a tax, the owners whereof are not residents in the county where the same is situated, and which shall not be returned to the Justice within the time limited, shall be liable to pay a twofold tax, and it is the duty of the Justice, appointed as aforesaid, to make return of a list of such property and the owners' names, at the time prescribed for making his return, so far as he shall have knowledge of the same.

The clerks of the several county courts shall, within 40 days after the Justices shall have made their returns, deliver to the sheriff of the county, a fair and accurate copy of the returns made by the Justices as aforesaid; and in case of failure thereof, shall forfeit the sum of £20: And it shall be the duty of the sheriff to bring suit for the same, to the use of the county. And the respective sheriffs shall proceed, after the first day of April in every year, to collect the taxes, and shall complete the collection of, and account for the same with the Public Treasurer, on or before the first day of October in every year. And if any sheriff shall fail to levy and collect any two-fold tax incurred by an infringement of this law, such sheriff failing, shall forfeit and be charged by the Comptroller with the full amount of the two-fold taxes so by him neglected to be collected. And it shall be the duty of the sheriffs to collect the con-

stable's fee of 2s. in every case where the person incurring the forfeiture has been summoned as aforesaid, or has not given in during the time prescribed as aforesaid, and to account with the constable to whom the said fees are coming, for every fee by him the said sheriff so collected; unless such person shall produce to the sheriff the constable's receipt for the same.

Whenever the sheriff of any county shall have reason to suspect, that any person whose name may be on the list of taxable property returned as aforesaid by the Justice appointed to take the list, is about to remove him or herself, or property, out of the county, to avoid the payment of taxes, the sheriff shall have power to proceed to levy and collect the tax due from such person immediately: Provided, such sheriff shall first make oath before some Justice of his county, that he has just reason to believe such person is about to remove him or herself, or property, out of the county, before the time of the payment of his or her taxes shall arrive, and obtain a certificate from such Justice to that effect.

It shall be the duty of the clerks of the several county courts, to make return to the Comptroller of the lists of delinquents returned by the Justices, at the same time and under the same regulations that he is directed by law to make return of the lists of taxable property.

It shall be the duty of the Sheriffs of the several Counties in this State, to collect a two-fold tax on all polls or taxable property, where any person shall fail to give in the same, is neither cited by the Constable, nor returned by a Justice of the peace to the clerk of the County Court; one half of which, they may retain to their own use, and the other half they shall acount for on oath to the Comptroller, at the settlement of public accounts.

All returns of taxables, to the Justice appointed as aforesaid, shall be on oath (see oaths) and in writing; relating back to the first day of April preceding, as to right of property and residence of polls.

Where it shall apear to the satisfaction of any of the County Courts in this State, that any person is charged with more land or polls on his list of taxable property than he ought to pay for, the said Court may order their clerk to give a certificate for the quantity of acres or polls so over charged, which cetificate shall be received by the Treasurer of the State, in part of said tax from the Sheriff of said County.

A valuation of Town lots with their improvements, shall be made every year, by commissioners to be appoined by the court of the county wherein such Town or Towns are situated, in dollars and cents, at the same time that other taxable property

is given in; and the Assessors shall make return thereof to the Clerks of the County Courts, at the next succeeding court after the assessment shall be made as aforesaid, under the penalty of $40, to the use of the County: and in the appointment of the Commissioners aforesaid, the court shall appoint three discreet persons, being freeholders within their respective Counties, who shall be qualified before some justice of the peace to perform the duties of their appointment. And the several County Courts shall and may allow the said assessor a reasonable sum for their services, which allowance being certified by the clerk of the court, shall be paid by the Sheriff out of the public tax, and allowed him in the settlement of his public accounts.

If any Justice of the peace shall receive any person's list of taxable property without taking such person's oath or affirmation thereto, as the case may be, the Justice so misbehaving, shall be deemed guilty of a misdemeanor, and upon conviction in any Court having cognizance thereof, shall be thenceforth suspended from the exercise of his office.

The Justices appointed to take the lists of taxable property shall require every person liable to pay a land tax, either by lease or otherwise, to list each and every tract of land by him, her or them holden within the county, stating the number of acres in each separate tract, its local situation and its reasonable value, including the improvements thereon; and where the dividing line between two counties runs through any tract of land, the owner of said land may list the same in either county; and it shall be the duty of guardians to list the lands of their wards, being minors, lunatics, or persons non compos mentis; and any person holding lands, or any guardian, who shall fail to list the lands as herein directed, shall pay a double tax, to be collected by the sheriff out of the property of the person bound to list the said lands, by distress or other mode used in such cases.

The Justices appointed as aforesaid shall make out a fair copy of the list of lands by them taken, with the number of acres and valuation annexed, and return the same, together with the list of other taxable property by them taken as herein before directed, and shall distinguish the persons' names, the number of free polls, the number of black polls, and every other species of taxable property.

The clerk of each of the county courts shall record at large, in alphabetical order, the annual returns of taxable property, made by the justices and assessors in his county, and the court shall make a reasonable allowance for such service, to be paid out of the county tax.

The said clerks shall, at the next court after the returns of the taxable property are directed to be made, set up in some conspicuous part of the court house, an alphabetical list of the same, with the amount of each person's tax extended; and when any collector shall return his list of insolvents to be allowed by the court, he shall make oath that he hath been at the dwelling house or usual place of residence of the persons therein named, and that he could not find property of such persons sufficient to discharge their respective taxes, or any part thereof; which list shall also be advertised by the clerk in the court house, specifying each district; and the clerk neglecting or refusing to perform the duties hereby required, shall for every such neglect or refusal forfeit, £50, to any person who shall sue for the same within six months.

The said clerks shall also make or cause to be made, return of the taxable property of their counties respectively, to the Comptroller, on or before the first day of September in each and every year; which return shall be an abstract of the lists returned to the clerk as required by law, shewing the number of acres of land listed, the valuation thereof, the valuation of Town property, the number of white polls, of black polls, of wholesale stores, of retail stores, of retailers of spirituous liquors, of stud-horses, of jack-asses, of gates, and of every species of property, separate and distinct, liable to pay a tax, and which shall be contained in said lists. And the clerks shall, at the time of making such returns, furnish the Comptroller with a certificate of the names of his securities, also with a certificate of the name of the sheriff of his county and his securities; which certificates, when certified by the Comptroller to be agreeable to the Originals shall on motion of the Treasurer for judgement against any such person, be deemed equally valid with the bond of the party, nd the court shall give judgment and award execution thereon. For every failure of the clerk to make such return to the Comptroller he shall forfeit £500, and be considered guilty of a misdemeanor, for which he shall, on conviction, be dismissed from office.

If any person owning lands in any county within this State, whether resident or non-resident, shall fail to return the same, to the Justice authorised to take the list of taxable property, in manner herein before provided, it shall be the duty of said Justice to summon a freeholder acquainted with the land, who shall value the same on oath within five days, and return the same to the Justice; and the said freeholder shall receive a compensation of $1 for each tract by him assessed, to be levied and col-

lected by the sheriff, at the time he collects the tax on said land, if not previously paid by the owner.

Where any person shall have failed to list his lands as aforesaid, and the Justice appointed to take the list shall have failed to have the same assessed as above mentioned, it shall be the duty of the Sheriff within the time prescribed for collecting the taxes, to summon one freeholder, residing near to, or acquainted with said lands, whose duty it shall be within 5 days after such notification to value such lands on oath, which oath the Sheriff or his deputy is authorised to administer; and such freholder shall trsnsmit under his hand, a fair transcript of such valuation to the clerk of the county court, at or before the succeeding county court, and also deliver to the sheriff another transcript of the same within 10 days after the valuation aforesaid; and the said freeholder shall receive one dollar for each tract by him assessed, to be collected as aforesaid; and the clerk shall incorporate the returns so made by the freeholders, with those made by the justices.

If the justice, at the time of receiving the list of taxable property, entertains the opinion that the person giving in manifestly undervalues the same, the said justice shall summon two freeholders, acquainted with said land, to value the same on oath; and the said freeholders shall each receive one dollar for every tract so assessed to be paid by the owner of said land, provided the valuation assessed exceed that returned to the justice; otherwise, to be paid by the county.

The valuation of lands and their improvements shall be made in dollars and cents.

Every freeholder summoned by the justices or sheriff as aforesaid, who shall refuse to perform the duties required by this act, shall forfeit fifty dollars.

The owners of all town lots within this state shall, by themselves, their agents or attornies, give in a list of the same, designating their numbers, respectively, in the town in which they are situated.

If any person residing out of the state shall fail to give in his taxable property, the land shall be liable to a double tax, and the polls, if any, shall be reported by the justice to the best of his knowledge, and the tax shall be levied thereon in the usual way, provided there be personal estate sufficient to pay the same; but if there shall be no personal estate, or not sufficient to pay the tax, and such tax shall remain unpaid for twelve months after it becomes due, then the lands, or so much thereof as may be necessary to pay the tax, with contingent charges, shall be sold by the Sheriff by order of the county court, and the sheriff shall account as in other cases

The sheriff shall appoint the day and place in each district of his county, when and where he will attend to receive public taxes, and shall advertise the same eight days previously; and if any person then neglect to pay his taxes, the sheriff may levy the same by distress and sale of goods and chattels; and for every distress and sale so made, the sheriff may levy therewith, as fees of office, the sum of 2s. 8d. Provided always, that the sheriff shall give ten days previous notice thereof, and the amount of the taxes due, by advertisement at three of the most public places in and near said district.

Every sheriff previous to settling his account, shall take and subscribe the following oath in the Comptroller's office, viz;

"I A. B. sheriff of the county of , do on this day of make oath, that the lists by me now given in, are to the best of my knowledge and belief complete, perfect and entire, and contain the full amount of all monies by me or for me received, or which ought to have been received on account of the Public taxes for the year ; and that I have truly and faithfully endeavoured to execute and govern myself by the act of Assembly, entitled "An act to amend the revenue laws of the state, passed December, 1791," without favour, affection or partiality, to the best of my knowledge and abilities. So help me god."

If any owner of land lying within this state, or any owner of town property within this state, shall fail, by himself, his agent or attorney, to give in a list of the same in the counties in which the lands or town lots are situated, the Sheriff of the said counties in which the same are respectively situated, shall advertise the said lands or town property, at three of the most public places within the county, and at the court house of the county wherein the lands are situated, and also in the gazette of the state, the printer of which is required to publish the same, and if no person pays the tax on the same, shall, sixty days after such advertisement, sell the said lands or town lots, or so much thereof as may be necessary to pay the said tax with contingent charges.

All entries of land heretofore made, or which shall hereafter be made, are liable to the payment of taxes, and shall be returned in the same manner, and paid at the same time as other taxable property. And if any entry of lands shall be caveated, it shall in that case be the duty of the person who originally entered the land, to return the same for taxation, such caveat to the contrary notwithstanding; and upon the caveat being determined, if the person who hath paid the taxes or returned the land for taxation, shall loose it, he shall be authorised to recover the amount paid or which he is liable to pay, from the person in whose favour the caveat was decided.

No lands shall be sold for their taxes until the same shall have been advertised for sale in the state gazette for the space

of one month, and also in the county in which they are situated, in manner as required where lands are not listed for taxes, as aforesaid; the whole expense of which shall be chargeable on such lands—in which advertisements shall be mentioned the situation of the lands, the streams near which or on which they lie, the estimated quality, the names of the tenants in possession, if cultivated, and the names of the reputed owners where the same can be ascertained; provided that no sale of lands shall take place under this act previous to the 1st day of August in each year.

When any land shall, by the laws of this State, become liable to be sold for the taxes of the same, the sheriffs respectively shall set up the whole of the lands belonging to any one person or company, for which the taxes thereon shall be due, to be sold to the person who will pay the amount of the public, county, and poor taxes, with all charges for advertising the same agreeably to law, for the smallest part thereof, and he shall strike off the quantity so bid or offered to be taken for the amount of the taxes and charges aforesaid, to the person offering to take the smallest number of acres of the land. And the purchaser may choose the quantity of land so struck off to him out of any part of the land offered for sale, to be laid off in one compact body as nearly in a square as can be, and adjoining to some of the outlines of such tracts or parcels of land: and the said purchaser shall within 3 months after the expiration of one year from said purchase, present to the sheriff a fair plat of the land he makes choice of, which plat shall be made by the County Surveyor or his deputy from actual survey, with the courses and distances fairly set forth and certified under his hand, which said survey shall be made at the expense of the purchaser, and the sheriff shall execute and deliver to him a deed for the same; but if said purchaser shall fail to present such plat, the land so purchased shall be deemed vacant and liable to be re-entered; if no person shall bid a smaller quantity than the whole, then the whole of the land set up shall be considered as a bid for the Governor, to the use of the State; and the sheriff shall strike it off to him accordingly, and make a deed for the same; which deed shall be executed in presence of the next ensuing County Court where the said land shall be, and shall be registered by the Clerk of said Court; and the Sheriff, before he settles his account with the Comptroller, shall deposit such deed in the office of the Secretary of State, who shall record and keep the same for the State: And the said land shall be deemed vacant land, and liable to entry; and the Secretary of State shall grant a certificate to such Sheriff, setting forth the quantity of land conveyed to the Governor, which certificate shall be returned to the Comptroller, and

such Sheriff shall swear before the Comptroller that he has conveyed to the Governor, in conformity to the requisitions of this act, all lands by him sold for the taxes thereof, & purchased as aforesaid for the use of the State—And such Sheriff shall be allowed in the settlement of his accounts, the amount of such taxes and charges, and commissions thereon, as if the money had actually been collected.

Any person purchasing lands sold for the taxes due thereon, shall be considered as taking and holding the same, subject to the taxes accruing and growing due thereon, from the 1st day of April next preceding the time of his purchase.

All returns of the clerks of the several courts of this state, to be made to the Comptroller, may be sworn to before two justices of the peace out of court: Provided, that, when he shall exhibit his return for probate, he shall produce the Dockets of his court from which said return is made, for the inspection of the said justices.

All lands sold for taxes may be redeemed by the owner within twelve months after the sale, by paying or tendering the full amount of the purchase money, and twenty five per cent. thereon, and all costs of sale accruing thereupon: *Provided always*, That no person bidding off any lands sold as aforesaid, shall proceed to survey the part so bought until one year after such sale.

All towns and lots, or other estate real or personal appertaining thereto, set apart and appropriated to divine worship or for the education of youth, are exempted from all taxes whatsoever.

The following list contains the present subjects of taxation, together with the taxes chargeable thereon respectively, to wit:

On every one hundred dollars value of lands and town lots with their improvements, eight cents.

On all stud-horses and jack-asses, the full sum which the owner or keeper shall ask, demand, or receive for the season of one mare.

On all Peddlers who shall peddle or hawk, in any county in this state, and not on a navigable stream, goods, wares or merchandize, not of the growth or manufacture of this state, six dollars, in each and every county in which he shall peddle; to be paid to the sheriffs.

On every merchant, who shall sell goods, wares, or merchandize, not of the growth or manufacture of this state, in any store, to the amount of four hundred dollars, in one year, if a wholesale merchant, sixteen dollars—and if a retail merchant, six dollars.

On every billiard table, fifty dollars.

On every company of itinerant stage-players, rope-dancers, tumblers and wire dancers, and every itinerant person or company who shall exhibit natural or artificial curiosities of any kind for reward, twenty dollars in each county wherein they shall perform or exhibit; to be paid to the Sheriffs.

On gates erected across any public road or highway, five dollars.

On every poll, (free males between the ages of 21 and 50, and all slaves between the ages of 12 and 50,) twenty-five cents.

On all stock holders in each of the Banks of Cape-Fear and Newbern, except the stock holden by the state, one per centum; to be paid by the Banks.

On every person who shall bring into this state for sale, any negro or negroes, ten dollars for each negro.

On every attorney where he shall first exhibit his license in court, for admittance to practise, if a general license twenty dollars; if to practise in the county courts only, ten dollars.

On every person who shall come into this state on board any vessel, with goods, wares, and merchandize on board, which shall not be subject to the payment of duties imposed by the laws of the United States, and break bulk or retail said goods, twenty dollars; to be collected by the sheriff of the county wherein such vessel may be anchored.

On all retailers of spirituous liquors by the small measure, forty eight shillings.

On proceedings in law and equity—for every subpoena or writ to answer to a bill in equity, or in the courts of law, twenty shillings; for every writ for the removal of the entire record of any cause from any of the courts of law in this State into any other court of law or equity, twenty shillings; for every leading process returnable to any Superior Court, ten shillings; for every appeal from the judgment of any inferior court of law, ten shillings; for every writ of *Mandamus*, *Certiorari*, or for the removal of the body of any person, or other writ to be granted on motion where the same is the original of any proceedings in court, fifteen shillings; for every leading process returnable to any court of pleas and quarter sessions, five shillings; for every appeal from the judgment or decree of any court of pleas and quarter sessions, or motion allowed instead of Writ of a Error, eight shillings.

Each Sheriff, upon settling his accounts with the Treasurer for the preceding year, shall make and subscribe an affidavit, that he has duly accounted in such settlement, for all taxes received by him under this act, upon any occupation, article or thing, not included in the lists of taxable property furnished to him by the clerk of his county; and shall append to the said affidavit, a list of all such taxes so by him received, and the names of the persons from whom he received the same, and set forth opposite to each item, the occupation, article or thing for which the said taxes were received.

I have now selected the most important provisions of the Acts of Assembly applicable to this head. The reader, however, should be apprized that much matter is necessarily excluded: first, on account of its bulk; and secondly because of the frequent changes this subject undergoes in the Legislature.

TAXES FOR COUNTY USES.

FOR the future an annual tax not exceeding five shillings on every hundred pounds value of taxable property in this state,

shall be levied for the purpose of defraying the contingencies of the several counties; which value shall be assessed, and tax collected, in the same manner, and under the like rules, regulations restrictions and allowances, as made and directed in levying and collecting public taxes; and the Sheriffs of each respective county in this state, are ordered and required to collect the aforesaid tax, or so much thereof as the county court in each respective county shall order and direct, and pay the same into the hands of the Trustee for county uses, annually.—1779. c. 3.

Every person holding lands by deed or entry where there is no caveat, or holding lands by lease for five years or for life, or in right of dower, shall pay in lieu of the tax directed to be levied on the hundred pounds, a county tax, on every three hundred acres; and also on each and every free poll being twenty one years of age, and on every slave, male and female, between twelve and fifty years old, equal to the tax imposed on each hundred pounds taxable property, and no more.—1784, ch. 6.

The county court of each county herein mentioned, *viz.* Chowan, Halifax, Camden, Edgecomb, Caswell Wake, Onslow, Northampton, Currituck, Montgomery, Pasquotank, Hertford, Bertie, Tyrrel, Cumberland, Anson, Nash, Richmond, Brunswick, Orange, Craven, Bladen, Jones, Carteret, Chatham, Burke and Dobbs, are empowered and directed to lay a tax, annually, not exceeding the sum of four shillings current money on every hundred pounds of taxable property in their county, and a poll tax of four shillings current money on every taxable person in the said county, for the purpose of defraying the contingent charges; which said tax shall be collected and accounted for in the same manner, at the same time, and by the same persons who are appointed to collect the public tax in each county, and to be paid into the hands of such person or persons as the several county courts shall from time to time direct. But a majority of the acting Justices of any court wherein any tax shall be laid, shall be present at the time of laying the same.—1784. ch. 30.

It shall be the duty of all Clerks within the respective counties of this state, if the same shall be thought adviseable or necessary and so ordered by the county court, to number all claims, orders and certificates that may be allowed by the court in which he or they act, in a book kept for that purpose; and shall annually, the day before the county court's proceeding to lay a county tax for the ensuing year, furnish the chairman of the court with a copy of the same; likewise shall insert the different allowances agreeable to the number in the

tax list that such Clerk or Clerks supplies the Sheriff or Collector with, in order that the same may be collected and paid according to their number and priority.

The county Trustee shall only settle it with the Sheriff or Collector of public taxes according to number, beginning at the lowest number; and where there is no Trustee in the county, the county court may and shall proceed to settle with their Sheriff or Collector of public taxes, in like manner.

Any county clerk neglecting or refusing to perform any part of the duty above enjoined, shall forfeit and pay the sum of ten pounds for every such offence; one half to the use of any person who may commence suit for the same, the other half to be applied towards defraying the county tax.

When any county court shall direct their Clerk to record and number the county claims as aforesaid, such county court shall and may allow the clerk for all such services, annually, any sum not exceeding forty shillings.—1793. ch, 16.

The court of each county shall at the first session after the first of June in every year, cause the proper officer to publish and set up in some part of the court house, an account of the monies received the preceding year by taxes or otherwise, stating also what application hath been made of the same, to whom paid, and what claims, if any, against the county remain undischarged.—1786. c. 16.

From and after the passing of this act, all fines, forfeitures, amercements, and tax fees on suits, & attornies licenses, as well in the superior as the county courts, shall be accounted for and paid for, to the county trustee, for the purpose of defraying the costs of state prosecutions and the contingent expense of the county.—1809. c. 11.

It shall be the duty of the sheriffs of the several counties in this state, to settle with the wardens of the poor and the treasurer of their respective counties, for the taxes on the unlisted property in their said counties, under the same rules, regulations and restrictions, as the said sheriffs are bound by law to account with the comptroller of the state. 1811. c. 20.

The Justices of the several county courts shall, at the first county court which shall happen after the first day of January in each and every year, lay a tax not exceeding five cents on every 100 dollars valuation of lands with their improvements, and a tax on the other objects of taxation as is already prescribed by law, for the purpose of paying the county charges. 1814. c. 8.

The wardens of the poor in each and every county in this state, shall lay a tax not exceeding five cents on every 100 dol-

lars valuation of lands with their improvements, and also a tax as hertofore established by law on the other subjects of taxation, for the purpose of defraying the parish charges of said county.—*Ibid.*

See *Prison, Poor, Jurors, Slaves.*

TENANT—See *Distress.*

THEFT—See *Larceny.*

THEFT-BOTE.

Is where the party robbed, not only knows the felon, but also takes his goods again, or other amends, upon agreement not to prosecute. This is frequently called compounding of felony, and formerly was held to make a man an accessory; but is now punished only with fine and imprisonment.—4 *Bla. Com.* 133.

TOBACCO.

The Justices in each respective county in this state, wherein public warehouses for tobacco now stand erected, shall, from court to court, as they shall deem fit and proper, regulate and ascertain what shall be paid as warehouse rent for each hogshead of tobacco, by the owner or owners of the same, which shall thereafter be brought to the said warehouse; and the Justices shall and may appoint some fit person to receive said monies, who shall be accountable to them at all times for the appropriation of the same, by action of debt, before any court having cognizance thereof, whein the Inspector's books shall be proof as to the number of hogsheads received, for the whole of which such person shall be liable to answer, and shall be allowed no protection.

The Justices in such respective counties as aforesaid, shall from time to time as occasion may require, lay out and appropriate any part of the aforesaid monies in repairing or rebuilding their respective warehouses, in such manner as they may think necessary.

The same rules and regulations shall be had and taken with respect to warehouses built by private persons on their own lands, and at which a public inspection hath been heretofore

held, so far as respects the warehouse rent that shall be paid for each hogshead of tobacco.

See INSPECTORS.

TRAVERSE.

Is a contradicting or denying the indictment, by pleading *Not Guilty* thereto—whereupon, a jury must be called and sworn to try the same.

It is in this form:

And afterwards, *to wit*, on the day of in the year of our Lord, one thousand eight hundred and sixteen, before the said Justices, came the aforesaid A. B. in his proper person, and having the hearing of the indictment aforesaid, he saith that he is thereof *Not Guilty*; and of this he puts himself upon the country; and C. D. Esquire, who prosecutes for the state in this behalf, in like manner, &c.

It is not agreeable to the general course of proceeding, unless by consent of parties, to try persons indicted of smaller offences, or misdemeanors, at the same court in which they plead *Not Guilty*, or traverse the indictment; but they usually give security to the court to appear at the next sessions, or term of the court, and then and there to try the traverse.

TREASURE-TROVE.

THE concealing of treasure found, which belongs to the state, is punished by fine and imprisonment.—4 *Blac. Com.* 121.

TRESPASS—See *Fences.*

TRIAL—See *Jury*, *Debt* and *Debtor.*

TRUST ESTATE.

EVERY Sheriff or other officer to whom any writ or precept shall be directed, at the suit of any person or persons, of, for, or upon any judgment had, or to be had, shall make and deliver execution unto the party in that behalf suing, of all such goods and chattels, lands and tenements, rents and other hereditaments as any other person or persons, be in any manner seized or possessed in trust for him, her or them against whom execution shall be sued, as the Sheriff or other officer

might or ought to have done, if the said party against whom execution hereafter shall be sued, had been seized or possessed of such goods and chattels, lands, tenements, rents or other hereditaments, of such estate as they be seized or possessed of in trust for him, her or them at the time of the said execution sued; which goods and chattels, lands, tenements, rents, or other hereditaments, by virtue of such execution, shall accordingly be held and enjoyed freed and discharged from all incumbrances of such person or persons, so seized or possessed in trust for the person or persons against whom such execution shall be sued; and if any *cestui que trust* shall hereafter die, leaving a trust in fee-simple to descend or come to his or her heir, executor or administrator, then and in every such case such trust shall be deemed, and is hereby declared to be legal assets in the lands of such heir, executor, or administrator, as the case may be, who shall be liable to and chargeable with the debts of his or her ancestor, testator or intestate, for and by virtue of such assets. The equity of redemption in all lands, tenements, rents, or other hereditaments, which now are or hereafter shall be pledged or mortgaged, shall in like manner be liable to any execution to be sued out against the mortgagors; and shall, in the hands of such mortgagors, be deemed, and is hereby declared to be assets by descent; and the heirs shall be liable and chargeable with the debts of their ancestor to the extent and in the manner herein before declared.

It shall be the duty of the Sheriff selling mortgaged lands, to set forth in his deed to the purchaser, that they were under mortgage at the time of the levy on and sale of the land.—*Acts* 1812. c. 4.

UNITED STATES.

It shall and may be lawful to commence and prosecute any action or actions, suit or suits, for any debt, duty or demand, in the name of the United States or any of them, in any court of law or equity, or before any Judge or Justice within this state, where the value of such debt, duty or demand, may be cognizable; and every such action or suit shall be subject to such rules and regulations, as actions and suits of like nature commenced or prosecuted by any citizen of this state. But costs shall be recoverable against the agent, factor or attorney, who shall commence the action or suit when judgment shall be given against the United States, or any of them.

In any action or suit, in the name of the United States, where it shall be made appear to the court that a declaration has been served on the defendant or defendants, with notice to prepare for trial at the next ensuing term, at least five days before the said term, issue shall be joined, and the action or suit shall be tried the first term, except in cases where the court shall grant longer time.---1771. c. 2.

Any Justice of the Peace, or any officer of the militia of this state, may accept and exercise any civil officer or appointment of profit or trust, under the authority of the U. States, the duties of which appointment shall be confined to this state. 1811. c. 8.

Whenever any penalty or forfeiture created by any act of the congress of the United States, hath been or shall hereafter be incurred by any person within this state, and by such act of Congress cognizance of such penalty or forfeiture hath been or shall be given to the courts of record of the several states, then and in every such case the courts of law of this state are hereby declared to have and shall hereafter have jurisdiction of the same, and full power and authority to try, and give judgment in all proper actions for the same, in the same manner as if such penalty or forfeiture had been created by an act of the General Assembly of this State. 1815, c. 11.

UNLAWFUL ASSEMBLY—See *Riots*.

USURY.

No person whatever, upon any contract, shall directly or indirectly take for loan of any monies, wares merchandize or commodities whatsoever, above the value of six pounds by way of discount or interest, for the forbearance of one hundred pounds, for one year, and so after that rate for a greater or less sum or for a shorter or longer time.

All bonds, contracts and assurances whatsoever, for the payment of any principal or money to be lent, or covenanted to be performed, upon any usury, whereupon and whereby there shall be reserved or taken above the rate of six pounds in the hundred, as aforesaid, shall be utterly void.

Every person whatsoever who, upon any contract, bargain, loan, exchange, shift, or interest of any monies, wares, merchandize, or other thing whatsoever, or by any deceitful ways or means, or by any discount, covin, device, or deceitful conveyance, for the forbearing or giving day of payment, for one whole year, of or for their money or other thing, above the

sum of six pounds for the forbearing of one hundred pounds for a year, and so after that rate for a greater or less sum, or for a longer or shorter time, shall forfeit and loose for every such offence, the double value of the monies, wares, merchandizes, and other things so lent, bargained exchanged, or shifted; the one moiety of all which forfeitures is to go to the state, and the other moiety to him or them that will sue for the same.

VAGRANTS.

It shall not be lawful for any person or persons who have no apparent means of subsistence, to neglect applying themselves to some honest calling for the support of themselves and families; and every such person so offending, who shall be found sauntering about neglecting their business, and endeavouring to maintain themselves by gaming or other means, it shall and may be lawful for any Justice of the Peace of the county wherein such person may be found, on due proof made, to issue his warrant for such offending person, and cause him to be brought before said Justice, who is hereby empowered, on conviction, to demand security for his or their good behaviour, and in case of refusal or neglect, to commit him or them to the gaol of the county for any term not exceeding ten days, at the expiration of which time he shall be set at liberty if nothing criminal appears against him, the said offender paying all charges arising from such imprisonment; and if such person shall be guilty of the like offence from and after the space of twenty days, he or they so offending shall be deemed a vagrant, and be subject to one month's imprisonment, with all costs accruing thereon, which if he neglects or refuses to pay, he may be continued in prison until the next court of the county, who may proceed to try the said offender, and if found guilty by a verdict of a jury of good and lawful men, said court may proceed to hire the offender for any time not exceeding the space of six months, to make satisfaction for all costs; but if such person or persons so offending, be of ill fame, so that he or they cannot be hired for the costs, nor give sufficient security for the same, and his or their future good behaviour, in that case it shall and may be lawful for said court to cause the offender or offenders to receive thirty nine lashes on his or their bare back, after which he or they shall be set at liberty, and the cost arising thereon shall become a county charge; which

punishment may be inflicted as often as the person may be guilty, allowing twenty days between the punishment and the offence.

It shall not be lawful for any person or persons of ill fame or sucpiccious characters, to remove him or themselves from one county to another in this state without first obtaining a certificate from the Sheriff of said county, or some Justice of the Peace or Captain of his company, setting forth his former good behaviour and his intention in removing, whether to settle in said county, or, if travelling, to set forth his business and destination; and if such traveller should be desirous to make any stay in any county longer than forty eight hours, he shall first apply to some Justice of said county for leave, and obtain a certificate for that purpose, setting forth the time of permission; and if such person shall be found loitering in said county after the expiration of his permit, or fail to obtain the same agreeable to the true intent and meaning of the law, such person, so offending may be apprehended by any person or persons and carried before some Justice of the Peace, who may enquire into his character and business, and fine him at his discretion, not exceeding forty shillings; but if the said traveller shall be found on examination to be a person of ill fame, and there be reason to suspect that he is loitering in said county for some evil purpose, attempting to acquire a living by gaming or other bad practices, such Justice shall have power to commit any person of like character, until he shall find good and sufficient security for his good behaviour, for any time not exceeding ten days: and such Justice of the Peace, or court of the county, shall proceed against such offender in the same manner as is heretofore prescribed for vagrants.

It shall not be lawful for any house-keeper in this state to harbour any traveller or idle person of the character aforesaid any longer time than is heretofore specified, under the penalty of five pounds, for every such offence, to be recovered by warrant before any Justice of the Peace of the county where the offence is committed.

All fines inflicted by this act, shall be one half to the informer, and the other half to the poor of the county.

For Forms, See *Appendix*.

Verdict—See *Jurors*.

VICE AND IMMORALITY.

All and every person and persons whatsoever, shall, on the Lord's day, commonly called *Sunday*, carefully apply

themselves to the duties of religion and piety; and no tradesman, artificer, planter, labourer, or other person whatsoever, shall, upon the land or water, do or exercise any labour, business, or work, of their ordinary callings, (works of necessity and charity only excepted,) nor employ themselves either in hunting, fishing, or fowling, nor use any game, sport or play, on the Lord's day aforesaid, or any part thereof, upon pain that every person so offending, being of the age of fourteen years, and upwards, shall forfeit and pay the sum of ten shillings current money.

If any person or persons shall profanely swear or curse, in the hearing of any Justice of the Peace, or shall be convicted of profanely swearing and cursing, by the oath of one or more witness or witnesses, or confession of the party before any Justice or Justices of the Peace, every such offender shall forfeit and pay the sum of two shillings and six pence, of the like money, for each and every oath or curse.—— And if any person executing any public office, shall profanely swear or curse, being first convicted, as aforesaid, such person shall forfeit and pay the sum of five shillings, of the like money, for each and every oath or curse.

If any person or persons shall profanely swear and curse, in the presence of any court of record in this government, such offender or offenders shall immediately pay the sum of ten shillings, of the like money, for each and every oath or curse; to be deposited in the hands of the chairman of the said court, and by him accounted for and paid, as herein after is directed; or to sit in the stocks, not exceeding three hours, by order of such court.

Every person convicted of drunkenness, by view of any Justice of the Peace, confession of the party, or oath of one or more witness or witnesses, such person so convicted, shall, if such offence was committed on the Lord's day, forfeit and pay the sum of five shillings of the like money; but if on any other day, the sum of two shillings and six-pence, for each and every such offence.

All and every Justice or Justices of the Peace, within his or their respective county, shall have full power and authority to convene before him or them, any person or persons who shall offend in any of the particulars before mentioned, in his or their hearing, or on other legal conviction of any such offence, and to impose the said fine or penalty for the same, and to restrain or commit the offender until it be satisfied, or to cause the same to be levied by distress and sale of the offenders goods, returning the overplus, if any, to the owner: And

in case any such offender be unable to satisfy such fine, to cause him to be put in the stocks, not exceeding three hours.

All informations against the aforesaid offences, shall be made within ten days after such offence or offences committed, and not after.

All fines accruing and becoming due by this act shall be levied as soon as may be after conviction, one half to the informer, the other half to the use of the parish where such offence shall be committed; and the Chairman and Justices of the several courts of the several counties in this state, are hereby directed to account for upon oath, and pay such fine or fines as shall or may by them, or any of them, be received, by this law, to the church wardens of the respective parishes of this government, at least once a year, when the same shall be demanded by the church wardens; under the penalty of paying the sum of twenty pounds, for every refusal, to be levied and applied as aforesaid.

If any persons commit fornication, upon due conviction, each of them shall forfeit and pay twenty-five shillings, for each and every such offence; to be recovered, and applied to the same use, as the other fines.—1741. c. 14.

Any two Justices of the Peace, upon their own knowledge or information made to them, that any single woman within their county is big with child, or delivered of a child or children, may cause such woman to be brought before them, and examine her upon oath concerning the father; and if she shall refuse to declare the father, she shall pay the fines in this act before mentioned, and give security to keep such child or children from being chargeable to the parish, or shall be committed to prison, until she shall declare the same, or pay the fine aforesaid, and give security as aforesaid; but in case such woman shall upon oath before the said Justices, accuse any man of being the father of a bastard child or children begotten of her body, such person so accused shall be adjudged the reputed father of such child or children, and stand charged with the maintenance of the same as the county court shall order, and give securities to the Justices of the said court to perform the said order, and to indemnify the parish where such child or children shall be born free from charges for his, her or their maintenance, and may be committed to prison, until he find securities for the same, if such security is not by the woman before given.—*Ib.* sec. 10.

The said two Justices of the Peace, at their discretion, may bind to the next county court him that is charged on oath as aforesaid, to have begotten a bastard child which shall not then

be born; and the county court may continue such person upon security until the woman shall be delivered, that he may be forth coming when the child is born.—*Ib.* sec. 11.

Whenever two Justices shall bind the reputed father of any bastard child to the next county court, in manner as prescribed in the aforesaid 10th section of the act of 1741, and the said reputed father shall not appear agreeable to his said recognizance; or whenever any woman shall swear a child to any man in manner as prescribed in the act, and the man to whom the said child is sworn shall abscond, or so conceal himself that the process of said Justices cannot be served on him; then it shall and may be lawful for the county court on return of the recognizance or other proceedings from the Justices of the Peace, to order their clerk to issue a Capias or an Attachment at the discretion of said court, to any county within this state, against the reputed father of such bastard child so absconded; and the same proceeding had thereon as in other like cases of a Capias or an Attachment.

And whereas by the 10th and 11th sections of the act aforesaid, it appears that in any subsequent proceedings necessary to be had on any warrant if issued, by virtue thereof, the authority to act is confined solely to the two Justices who issued the same; which tends often to defeat the purposes of the act: therefore the power to act as provided by said 10th and 11th sections shall be, and the same is hereby vested in any two of the Justices of the county in which such warrant shall have issued.

When any county court within this state, shall charge the reputed father of any bastard child with the maintenance of the same, in manner as prescribed in the 10th section of the aforesaid act, and the said reputed father shall refuse or neglect to pay the same, then it shall and may be lawful for such county court on notice being served on the defendant at least ten days before the sitting of such court, or such notice being returned by the Sheriff of the county that the defendant is not to be found, to order an execution against the goods, chattels, land, and tenements of the said reputed father, sufficient to satisfy and discharge such sum as the said county court may adjudge for the maintenance of the said bastard child: Provided, that the party aggrieved by such non-payment shall make application for the same. 1799. c. 17.

The crimes of fornication and adultery, where a man shall take a woman into his house or a woman a man, and they shall have one or more children without parting or an entire separation, or where it shall be proved to the satisfaction of the

court and jury before whom it shall be tried, that they bed or cohabit together, shall be deemed and held indictable offences, and cognizable before any of the Superior or county courts of this state. And any person legally convicted of either of the aforesaid offences, shall be fined at the discretion of the court before whom he or she may be tried, in any sum not exceeding £100: Provided always, that the evidence of the person who may be *particeps criminis* shall not be admitted to charge any defendant under this act.—1805. c. 14.

Whenever any man shall, in the manner prescribed in the act of 1741 aforesaid, be accused by any single woman of being the father of her bastard child or children, the person so accused, upon the return to the county court of the recognizance, Capies or Attachment, as the case may be, be entitled to have an issue made up to try whether he be the father of such child or children; upon the trial of which issue, the examination of the woman upon oath, taken before two Justices of the Peace in the manner prescribed by the aforesaid act and returned to court, shall be *prima facie* evidence only, against the person so accused. And if the jury shall, upon the trial of such issue, find that the person so accused is the father of the child or children, he shall stand charged with the maintenance thereof in the manner prescribed by the said act: but if the jury shall find that he is not the father of such child or children, he shall be discharged. And all examinations upon oath to accuse or charge any man of being the father of a bastard child, shall be had and taken within three years next after the birth of said child and not after.

WAYS.

One man may have a way over another's soil in this country two ways—by necessity, and by grant.

First, by necessity—as if A. has an acre of ground surrrounded by ground of B.—A. by necessity has a way over a convenient part of B's ground to his own soil, as a necessary incident to his ground—so if A. grant a piece of land which is surrounded by land of the vendor or seller, he grants a way as necessarily incident therewith.

If a man have two peices of land, and use a way over one of them from the other to a mill, river, &c. and he grant the latter with all ways, &c. the grantee shall have the same convenience that the grantor had when he had the piece conveyed.—So if A. has two acres of land, and has a way from them over another's soil, & grant one of them with all ways, the grantee shall have the same way that the grantor had.

If a way of necessity be claimed, it is a good plea to say, the party has another way; but otherwise, where a way is claimed by grant. 6 Mod. 3. 4. 3 Com. D. Chemin. D. 3. D. 4. 1 Cro. J. 124. 122. 190. 3 Lev. 305. Fawsley 56. Noy. 9.

And now some provision is made herein by act of Assembly, for by 1798. c. 20. it is enacted:

That from and after the passing of this act, on the petition of any person or persons to the county court for a cart or waggon way to be kept open across another person's land, unless such petitioner shall make it appear to the satisfaction of the court that the adverse party has had twenty days notice of such his intention, it shall be the duty of such court to cause such petetion to be filed in the Clerk's office until the next succeeding court; at which court the Justices present shall hear the allegations set forth by the petitioner, and if sufficient reason be shewn, it shall be the duty of such court to pass an order, directing the Sheriff to summon a jury of twelve freeholders, to go on the premises and view the same, and lay off a cart-way not less than fourteen feet wide, and assess the damages the owner of such land may sustain thereby; and such damages with the expense of making the road shall be paid by the petitioner, and shall be kept open for the free passage of persons on horse-back, carts and waggons. *Provided nevertheless*, That any person across whose land such cart way may pass, shall at the discretion of such proprietor, be at liberty to erect gates or bars across the same.

That any person that shall leave open, break down, or otherwise destroy any gate or bars that may be erected across any cart-way laid off as aforesaid, shall on conviction thereof forfeit and pay twenty shillings for such offence, for the use of the person suing for the same, to be recovered before any Justice of the Peace for the county where the offence may be committed.

That any cart-way laid off as aforesaid for and at the request of a petitioner, for the use as aforesaid, shall be free for the passage of any person or persons to pass. *Provided*, That this act shall not be construed so as to exempt any such petitioner or petitioners from working on the public roads to which the court may have directed.—*Hay. Justice*

And by act of 1785. c. 24. if any person under pretence of owning the land adjoining or surrounding any church, meeting-house, or other house or houses of religious public worship, shall stop or obstruct, or cause the same to be done, the usual way or ways leading to or from any of the aforesaid places of

public worship, or springs or wells thereby used, such person shall forfeit the sum of £5, for every such offence, one half to the person suing for the same, the other half to be applied to the maintenance of the poor of such county. Nothing herein shall subject any person to the penalty aforesaid who shall surround any spring or well with a fence, if such fence shall not absolutely render a passage to such spring or well impracticable; and no surrounding any piece of land through which any of the aforesaid ways shall lead with a fence, shall subject any person to the said penalty, if a passage shall be left to the church, meeting-house, or place of religious public worship, of the same width at least that such way was usually of.

WARRANTS.—See *Arrest*—and for the Forms, see *Appendix*.

WEIGHTS AND MEASURES.

Selling by false weights and measures is an offence at the common law for which the offender may be indicted and punished by fine and imprisonment. 2 Burr. 1129. And by the act of Assembly of 1741. c. 17.

No inhabitant or trader shall buy or sell, or otherwise make use of in trading, any other weights or measures than are made and used according to the standard in his majesty's exchequer in Edgland, and the statutes of England, in that case provided.

The Justices of each and every county within this government, shall, within two years next after the ratification of this law, at the charge of each county respectively, provide sealed weights, of half hundreds, quarters of hundreds, half quarters of hundreds, seven pounds, four pounds, two pounds, one pound, and half-pound & mearsures, of ell, and yard, of brass or copper and measures of half bushel, peck, and gallon, of dry measure; and a gallon, pottle, quart, and pint, of wine measure; (for the payment of which charge, the said Justices are hereby empowered to levy a tax on their respective counties,) to be kept by such person, and in such place, as the Justices of each respective county shall appoint, such person first giving sufficient security to the said Justices, in the sum of fifty pounds: And the said Justices shall also find & provide for the said person, a stamp for brass, tin, iron, lead, or pewter weights, or measures, and also a brand for wooden measures, of the letters N. C. upon pain of forfeiting and paying the sum of ten pounds, to be recovered from the said Justices, and applied to the use of the state, and the contingent charges there-

Any person whatsoever using weights or measures, shall bring all their measures and weights to the keeper of the standard of the county where such person shall reside or trade, to be there tried by the standard, and sealed or stamped: And if any person or persons shall buy, sell, or barter, by any weight or measure which shall not be tried by the standard, and sealed or stamped as aforesaid, he, she, or they so offending, shall, for every such offence, forfeit and pay the sum of ten pounds, one half to the use of the county where such offence shall be committed, and the other half to the party who shall sue for the same.

All and every person who shall use, buy or sell, by steelyards, shall, once every year, try the same with the standard, and take a certificate from the keeper of the standard for the county wherein such person shall reside, upon pain of twenty shillings, to be recovered and applied as aforesaid.

The standard keeper of each and every county, shall, at the next court to be held for the county in which he shall reside, take an oath, which see under *Oaths*.

The standard keeper of each and every county in this government, is hereby empowered and required, with the assistance of a constable, (who is hereby commanded upon notice, to attend him) upon information made to him of any person or persons keeping, or having in his or their house or custody, any steelyards, weights, or measures, which have been altered, lessened, or shortened, since they were tried and sealed by the standard, or shall be suspected of buying, selling, or bartering by such false weights and measures, to search the houses or other suspected places of such offender, for any such weights or measures so falsified; and if upon search, any such false weights or measures shall be found, he shall charge a constable with the owner of them, or the person using them, who shall forthwith convey him, her, or them before any justice of the peace, who is hereby directed to bind him, her or them, over to the next court to be held for the county where the offence shall be committed; and the said offence shall be laid before the grand jury, by the state's attorney general, or his deputy, and for want of them, by any person the county court shall think fit to appoint, and shall be cognizable by the said grand jury, either by indictment, or presentment; and if, upon trial by petit jury, such offender or offenders shall be found guilty, the county court shall fine each and every person so convicted, in any sum not exceeding twenty-five pounds, one third part thereof to the informer, one third part to the standard keeper, and one third part thereof to be paid to the

justices of the county, to be applied to the use of the county where the offence shall be committed; and shall commit the offender to gaol until the same shall be paid. And further, if it appear to the county court by the verdict of the petit jury, that the offender altered, lessened, or shortened his or her steelyards, weights or measures, or caused the same to be done, or used such steelyards, weights or measures, knowingly, after they were so altered, lessened or shortened, with an intent to defraud any person; in such case the court shall, besides, and notwithstanding the said fine, sentence such offender to stand publicly, during the sitting of the court, two hours in the pillory, with his offence written over his or her head: Any law, custom, or usage to the contrary, notwithstanding.

The naval officer of each and every port within this government, shall affix up, in a public part of his office, and there constantly keep affixed, an advertisement of the law, that traders coming into this government, may have notice thereof, upon pain of forfeiting five shillings, for every twenty-four hours the same shall be neglected; to be recovered by any person who shall sue for the same, and applied, one half to the informer, and the other half to the use of the said county.

The justices of every county respectively, shall have power to take and receive into their custody, all such weights and measures as have been already provided by their respective county or parish, and shall also demand and receive from all and every person or persons whatsoever, all such sums of money as have been already raised to purchase such weights and measures, and dispose of and apply the same, according to the directions of this law.

By act of 1779. c. 10. if any person shall sell and deliver any kind of grain, salt or other article, in a less measure than the standard established by law, such person shall forfeit for each offence the sum of £500 (£10 by the scale) to the use of the person suing for the same.

WIDOWS.

The widow of any intestate may at the same court when letters of administration are granted, petition the said court to appoint one justice of the peace and three freeholders, unconnected with the said widow; whose duty it shall be to view the estate of such intestate, and to allot and point out such part of the crop, stock, and provisions as they may conceive necessary and adequate for the support of the widow and fami-

ly for the space of one year; and under their hands and seals make returns to the next succeeding court, of the quantity and articles by them laid off, and allotted to the widow and family; having first taken an oath, that they will faithfully and impartially, to the best of their knowledge and ability, give and apportion to said widow and family, so much or such part of the crop, stock and provisions as they may deem necessary for the support of the widow and family for one year and no more.

Such apportionment or allotment shall vest in the said widow an absolute right therein to her own use and the use of her children, where there may be children; but shall nevertheless be returned in the inventory of said estate by the administrator therein notifying that the same has been allowed and given the widow for her support; which notification and return of the person so appointed by the said court, shall exonerate such administrator from being accountable for the same, either to the claimants upon the estate of the deceased or creditors, and shall not be considered as assets in their hands for which they shall be liable or accountable; and that the said part or portion of the estate so given to the widow shall not debar her from the distributive share now allowed by law. —*Acts* 1796. c. 29.

In all cases where a person dies intestate, leaving a widow who shall petition for her year's provision according to the laws now in force, the commissioners to be appointed shall inquire whether there is on hand, a crop, stock, and provisions, out of which a sufficient provision can be made for the widow for one year, and if so, shall allot to the widow thereout a provision for one year; and if there shall be no crop, stock, or provisions, or not a sufficiency to afford such allowance, the commissioners, shall proceed to estimate the value of a year's provision for the said widow and family, and make return under their hands and seals of the said estimate to the next court of pleas and quarter sessions, whereupon it shall be the duty of the court to decree that the same be paid by the administrator, who shall be allowed the same in the settlement of his account, and may plead the same or give it in evidence under the plea of 'fully administered,' to any claim which may be brought against him; and such sum shall not be taken into account so as to bar the widow of any part of her distributive share.—1813. c. 14.

WIFE.

A wife cannot be guilty of a felony in taking her husband's goods; and if she delivers them to a stranger it is no felony in the stranger.

A married woman by her own act in person, may commit a forcible entry or detainer, and she may be punished for so doing as others may; but the fine set upon her for so doing, shall not be levied upon the husband; for he shall never be charged for the act or default of his wife, but when made a party to the action, and judgment given against both.

If the wife, without the husband, be indicted for any trespass, riot, or any other wrong indictable, she shall answer, and be party to the judgment only, and the fine set upon her shall not be levied upon the husband—after the husband's death such fine shall be levied upon herself—and as for imprisonment or other corporeal pain, it shall be inflicted upon the wife only, and not upon the husband for her fault.

A wife cannot be bound herself in recognizance but by her sureties.

If a wife incur the forfeiture of a penal statute or act of assembly, the husband may be made a party to an action or information for the same, and he shall be liable to answer what shall be recovered therein.

A prosecution for conspiracy, is not maintainable against husband and wife, because they are esteemed but as one person in law.

See *Accessory, Feme Covert, Women, Behaviour.*

WILLS.

No person shall be capable of disposing of chattels by will, until he or she shall have attained the age of eighteen years. This act shall be in force from and after the passage thereof.—1811. ch. 27.

To dispose of real estate by will, the testator must be twenty-one years of age.

See *Executors and Administrators.*

WITNESSES.

Every witness summoned to appear in court and give evidence, who shall fail therein, shall forfeit and pay to the par-

by at whose instance the subpœna issued, the sum of £20 and shall be further liable to the action of such party for damages.

During the attendance of any person summoned as a witness & during his travel to & from the place of such attendance, allowing one day for every 30 miles, he is privileged from the service of any writ or other process, except for treason, felony, rescous, breach of the peace, or upon an escape out of prison or custody, or a subpœna. Any witness who shall have failed to appear, on making satisfactory proof to the succeeding court, that he or she was by some unavoidable accident or other cause prevented from attending, whereby the court may exempt such witness from the forfeiture, such witness so exonerated shall not be subjected to any costs that may have accrued. And every witness for the state, whose forfeiture for non-attendance shall be remitted by the court, shall be wholly exempt from all costs.

Witnesses are entitled, in civil and criminal cases, for attending the superior courts each day, and for every 30 miles travelling to and from said courts, if in their own county six shillings, if out of their county, ten shillings—and for attending the courts of pleas and quarter sessions, eight shillings for every 30 miles travelling to and from court, and four shillings for each day's attendance on court.

In civil cases, the witness may either demand and by warrant recover of and from the party at whose instance he shall have been summoned, after each and every court, the amount of his pay then due according to the clerk's certificate, or he may wait till the cause be finally disposed of and then file his certificates of attendance, to be collected by execution from the party cast.

Where witnesses are required to attend any commissioners, referees or order of survey, a summons shall be issued by the clerk of the court, at the request of either party, or their agent, expressing the day and place where they are to appear, the names of the parties to the suit, and in whose behalf summoned.—And all witnesses so summoned, shall be entitled to the same privileges, and receive the same pay for their attendance, and be subjected to the same pains and penalties for non-attendance, as witnesses summoned to attend the courts of pleas and quarter sessions.

In all state prosecutions, where the state shall be liable for the costs, whether in the superior or county courts, such costs are to be discharged out of the fund provided for that purpose

and paid into the hands of the county trustees: for which, see *Taxes for County Uses.*

See *Evidence, Depositions, Debt and Debtor.*

WOMEN.

If any person shall for lucre take any woman, maid, widow or wife, having substance either in goods or lands, or being heir apparent to her ancestors, contrary to her will; and afterwards she be married to such misdoer, or by his consent to others, or defiled, such person, and all his accessories, shall be deemed principal felons; and the benefit of clergy is taken away from all such felons, except accessories after the offence. 2 *H. 7.* ch. 2. 30 *Eliz.* ch. 9.

The indictment must allege, that the taking was for lucre, for such are the words of the statute. 2. In order to shew this, it must appear that the woman has substance, either real or personal, or is an heir apparent. 3. It must appear that she was taken away against her will. 4. It must also appear that she was afterwards married, or defiled—and though possibly the marriage or defilement might be by her subsequent consent, being won thereunto by flatteries of the taker, yet this is felony if the first taking were against her will. And so, *vice versa*, if the woman be originally taken away with her own consent, yet if she afterwards refuses to continue with the offender, and be forced against her will, she may from that time, as properly be said to be taken against her will as if she never had given any consent at all; for till the force was put upon her she was in her own power. 5. It is held that a woman thus taken away and married, may be sworn and give evidence against the offender, though he is her husband *de facto*, contrary to the general rule of law; because he is no husband *de jure*, in case the actual marriage was also against her will. In cases indeed where the actual marriage is good, by consent of the inveigled woman, obtained after her forcible abduction, Sir Matth. Hale seems to question how far her evidence should be allowed—but other authorities seem to agree, that it should even then be admitted; esteeming it absurd, that the offender should thus take advantage of his own wrong, and that the very act of marriage, which is a principle ingredient of his crime, should (by a forcible construction of law) be made use of to stop the mouth of the most material witness against him.

If any person above the age of fourteen, unlawfully shall convey or take away, any woman child unmarried (which is

held to extend to bastards as well as legitimate children) within the age of fifteen years, from the possession, and against the will of the father, mother, guardians or governors, he shall be imprisoned two years, or fined at the discretion of the Justices: and if he deflowers such maid or woman child, or without the consent of parents contracts matrimony with her, he shall be imprisoned five years, or fined at the discretion of the Justices; and she shall forfeit all her lands to her next of kin, during the life of her said husband.—4 & 5 *P.* & *M.* c. 8.—*Hay. Justice.*

In every case where a man being convicted of any felony, may demand the benefit of his clergy, if a woman be convicted of the same or like offence, upon her prayer to have the benefit of this act, judgment of death shall not be given against her, but she shall suffer the same punishment as a man should suffer who has the benefit of his clergy allowed him in the like case.—1806. c. 6.

Any words spoken of women which may amount to a charge of incontinency, shall be deemed and held to be actionable, and shall subject the person using them to an action on the case.—1808. c. 13.

WOODS.

It shall not be lawful for any person whatsoever to set fire to any woods except it be his own property, and in that case it shall not be lawful to set fire to his own woods without first giving notice to all persons owning lands adjacent to such wood lands intended to be fired, at least two days before the time of setting such woods on fire, and also taking effectual care to extinguish such fire before it shall reach any vacant or patented lands, contiguous to, or adjacent to such lands so fired.

If any slave, free negro, or mulatto, or vagrant person, unable to pay the fine aforesaid, shall be convicted of setting fire to any woods, contrary to the true meaning of the act in that case made and provided, such person, on conviction thereof, shall have and receive on his bare back thirty-nine lashes, well laid on, at the public whipping post.—1777. c. 25.

Every person offending against the above provisions, shall forfeit and pay for every such offence the sum of twenty-five pounds, to the use of the person who shall sue or prosecute for the same, and shall also be further liable to the party injured by such unlawful firing of the wood, for all damages that may accrue therefrom.—1782. c. 29.

WRECKS.

After the 1st day of April next, it shall be lawful for the several county courts of Currituck, Carteret, Onslow, New-Hanover and Brunswick, and they are hereby required, at their first county courts, and each and every year thereafter, to appoint two or more discreet and proper persons as commissioners of wrecks in their respective counties, for the next ensuing year, who shall severally enter into bonds, with two or more good and sufficient securities, in the court of the county where they reside, in the sum of £2000, for the faithful discharge of the duties of their office; and it shall be the duty of the clerks of the aforesaid county courts, to make out a certificate to each commissioner appointed as aforesaid.

It shall be the duty of the Commissioners appointed as aforesaid on the earliest intelligence given, or on application to them made, by or on behalf of any owner, supercargo, or commander of any ship or other vessel being in danger of being stranded, to command any sheriff or constable nearest the coast where such ship or other vessel shall be in danger, to summon as many men as shall be thought necessary to the assistance of such vessel, who are to be under the direction of the master or owner; and the commissioners, and all others who shall assist in preserving any ship or other vessel in distress, or their cargoes, shall within 40 days be paid a reasonable reward by the commander or owner of the vessel in distress, by the merchant whose vessel or goods shall be saved; and in default thereof, the vessel or goods shall remain in the custody of the commissioners or salvors, until all reasonable charges be paid, or security given for that purpose, to the satisfaction of the parties: and in case the parties shall disagree touching the amount of the reward to be paid the persons employed, it shall be lawful for the commander of such vessel saved, or the owner of the goods, or merchant interested, to choose one indifferent person, and also for the commissioners or salvors to nominate one other indifferent person, who shall adjust and ascertain the same, and such adjustment shall be binding on all parties, and to be recoverable, with costs, in any court of record, or any competent jurisdiction within this state.

The commissioners appointed as aforesaid shall not take upon themselves any authority to advertise, or in any way to dispose of any vessel or cargo, or any part thereof, where there is an owner, supercargo, consignee or captain present, but in all things to aid and assist him or them, as he or they

may direct; and for such services, such commissioner or commissioners shall be allowed a reasonable compensation, over and above his salvage right, for labor done.—See *Post.*

If any person besides those empowered by the commissioners, or any one of them, shall enter, or endeavor to enter, on board of any vessel in distress or stranded, without the leave of the captain or owner; or in case any person shall molest them in saving the vessel or goods, or shall deface the marks of any such goods before they be taken down in a book by the commissioners, or one of them, every such person shall forfeit and pay the sum of one hundred pounds, to be recovered before any competent jurisdiction, to the use and benefit of the owner of the vessel or goods, as the case may be; and in case of failure to pay such forfeiture immediately, or give security to pay the same within twenty days, he or they shall be committed to the county jail not exceeding three months. And in case any goods shall be found upon any person that were stolen or carried off from any vessel in distress or stranded, the person upon whom such goods shall be found, shall, upon demand, deliver the same to the owner or commissioners, or to such other person as shall be authorised by the owner or commissioners to receive such goods, or shall be liable to pay treble the value, to be recovered before any competent jurisdiction.

Should any vessel or other property be cast ashore, within the limits of any of the aforesaid counties, without any person present to claim the same as owner, the commissioners, or one of them, shall take possession thereof, and cause a true description of the marks, numbers and kinds of such goods to be advertised in one or more public gazettes, for the space of eight weeks; and if no person shall claim the same within 12 months, public sale shall be made thereof; but if perishable, the goods shall be sold after being advertised in two or more public places, not less than ten, nor more than twenty days, as circumstances may require. And after all reasonable charges deducted, the residue of the money, with an account of the whole, shall be transmitted to the clerk's office of the court of the county where such vessel may be stranded or goods saved; and the said clerk shall make a record and keep an account of the same, for the benefit of the owner, who, upon proof of his property to the satisfaction of the commissioners, together with two justices, shall, by ther warrant or order, receive the same, paying to the clerk of such court one per cent. for his trouble, but should the net amount of such sales by any commissioners as aforesaid, exceed the amount of the clerk's bond, then and in that case, it shall be the duty of the com-

missioners aforesaid to transmit the amount to the clerk's office of the district court of the district where such vessel or goods may have been stranded, under the same regulations as if it had been put into the hands of the clerks of the county courts as aforesaid; and should no person claim the same within a year and one day from the date of the advertisement, it shall then and in that case be the duty of the clerk holding such money, to transmit the same, after deducting one per cent. for his trouble, to the public treasurer of the state, for the use of the state.

When any person or persons shall find any stranded property on or near the sea shore, and no owner appearing to claim the same, he or they shall, as soon as possible after saving the same, give information to the nearest commissioner thereof, and to him deliver the same, for which he shall be entitled to his reasonable salvage, to be ascertained in manner before directed; and should any person finding stranded goods or other property as aforesaid, conceal the same, or convert them to his own use, or fail within ten days to give information thereof to the nearest commissioner of wrecks in his or their county, on proof thereof had, he or they shall pay to the commissioners discovering the same, double the value of such property, to be recovered before any competent jurisdiction having cognizance thereof. If any person shall embezzle or steal any stranded property, or conceal the same knowing it to have been stolen, such person or persons, upon due proof thereof, shall forfeit and pay to the owner or commissioner, double the value of the stolen goods so proved against him or them, or found in his or her possession, to be recovered before any justice of the peace, or any other competent jurisdiction; and the person or persons so feloniously taking or concealing the same, shall moreover be liable to be prosecuted on behalf of the state and suffer as in other cases of theft. Should any commissioner appointed as aforesaid, either by fraud or wilful neglect, abuse the trust so reposed in him, he shall, upon conviction thereof, forfeit and pay treble damages to the party aggrieved, to be recovered, with costs, by action on the case, in any court of record, and shall thereafter, be incapable of acting as a commissioner. And any sheriff or constable, or other persons summoned as aforesaid, refusing or neglecting to give the assistance required for the saving any vessel or her cargo, shall forfeit and pay the sum of forty shillings, to be recovered by the commissioners ordering such duty, before any justice of the peace in the county where such duty was required.

The commissioners so appointed, after the first day of April

next, before their entering into bonds, shall, in their county courts respectively, take and subscribe to the following oath, to wit:

"I, A. B. do solemnly swear, that I will truly and faithfully discharge the duties of a Commissioner of Wrecks, in the county of , agreeably to law, and to the best of my skill and abilities. *So help me God.*"

And the commissioners appointed as aforesaid, in their respective counties, where there may be any stranded or wrecked property cast ashore, or any such property coming into their hands, where there appears no owner to claim the same, such commissioner shall be allowed for his trouble a sum not exceeding five per cent. on the value or sales of such goods, in full for all service by him or them performed, and no more.—*Acts*, 1801, c. 35.

In future, the commissioners in each of the counties in the aforesaid act mentioned, shall be deemed the proper officers to advertise and expose to sale at public auction, any cargo or cargoes which may be stranded or cast on shore in his or their respective districts, except the captain, owner, merchant or consignee shall choose to superintend such sale himself, or to remove the property without selling it. And each commissioner aforesaid shall provide himself with books sufficient, and shall record in them all such sales by him made, and shall deliver to the captain, owner or merchant, or other person concerned, a true account of any such sale or sales which shall have been made. And the said commissioner shall receive for such service, two and a half per cent. on the amount of all such sales.

No person who shall hold any office or deputation under the United States, shall act as a commissioner in either of said counties—*Acts*, 1805, c. 19.

APPENDIX.

A DECLARATION OF RIGHTS.

At a Congress of the Representatives of the Freemen of the State of North-Carolina, assembled at Halifax, the seventeenth day of December, in the year of our Lord one thousand seven hundred and seventy-six, for the purpose of establishing a CONSTITUTION or FORM OF GOVERNMENT for the said State.

A DECLARATION OF RIGHTS,

Made by the Representatives of the Freemen of the State of North-Carolina.

SECTION I.

THAT all political power is vested in and derived from the people only.

II.

That the people of this State ought to have the sole and exclusive right of regulating the internal government and police thereof.

III.

That no man or set of men are entitled to exclusive or separate emoluments or privileges from the community, but in consideration of public services.

IV.

That the legislative, executive, and supreme judicial powers of governmen ought to be forever separate and distinct from each other.

V.

That all power of suspending laws, or the execution of laws, by any authority, without consent of the Representatives of the people, is injurious to their rights and ought not to be exercised.

VI.

That elections of members to serve as representatives in General Assembly ought to be free.

VII.

That in criminal prosecutions every man has a right to be informed of the accusation against him, and to confront his accusers and witnesses with other testimony, and shall not be compelled to give evidence against himself.

VIII.

That no freeman shall be put to answer any criminal charge, but by indictment, presentment, or impeachment.

IX.

That no freeman shall be convicted of any crime, but by the unanimous verdict of a Jury of good and lawful men, in open court as heretofore used.

X.

That excessive bail should not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted.

XI.

That general warrants whereby any officer or messenger may be commanded to search suspected places, without evidence of the fact committed, or to seize any person or persons not named, whose offence is not particularly described and supported by evidence, are dangerous to liberty, and ought not to be granted.

XII.

That no freeman ought to be taken, imprisoned or disseised of his freehold, liberties or privileges, or outlawed or exiled, or in any manner destroyed or deprived of his life, liberty or property, but by the law of the land.

XIII.

That every freeman restrained of his liberty is entitled to a remedy to enquire into the lawfulness thereof, and to remove the same if unlawful, and that such remedy ought not to be denied or delayed.

XIV.

That in all controversies at law respecting property, the ancient mode of trial by jury is one of the best securities of the rights of the people, and ought to remain sacred and inviolable.

XV.

That the freedom of the press is one of the great bulwarks of liberty, and therefore ought never to be restrained.

XVI.

That the people of this state ought not to be taxed or made subject to the payment of any impost or duty, without the consent of themselves or their representatives in General Assembly freely given.

XVII.

That the people have a right to bear arms for the defence of the state; and as standing armies in time of peace are dangerous to liberty, they ought not to be kept up; and that the military should be kept under strict subordination to, and governed by, the civil power.

XVIII.

That the people have a right to assemble together to consult for their common good, to instruct their representatives, and to apply to the Legislature for redress of grievances.

XIX.

That all men have a natural and unalienable right to worship Almighty God according to the dictates of their own conscience.

XX.

That for redress of grievances, and for amending and strengthening the laws, elections ought to be often held.

XXI.

That a frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty.

XXII.

That no hereditary emoluments, privileges or honors ought to be granted or conferred in this state.

XXIII.

That perpetuities and monopolies, are contrary to the genius of a free state, and ought not to be allowed.

XXIV.

That retrospective laws, punishing facts committed before the existence of such laws, and by them only declared criminal, are oppressive, unjust, and incompatible with liberty, wherefore no *ex post facto* law ought to be made.

XXV.

The property of the soil in a free government, being one of the essential rights of the collective body of the people, it is necessary in order to avoid future disputes, that the limits of the state should be ascertained with precision; and as the former temporary line between North and South Carolina was confirmed and extended by Commissioners appointed by the legislatures of the two states, agreeable to the order of the late King George the second, in council, that line, and that only, should be esteemed the southern boundary of this state, as follows; *that is to say*, Beginning on the sea side, at a cedar stake at or near the mouth of Little river, being the southern extremity of Brunswick county, and running from thence a north west course through the boundary house, which stands in thirty-three degrees, fifty-six minutes, to thirty-five degrees north latitude; and from thence a west course so far as is mentioned in the charter of King Charles the second, to the late proprietors of Carolina; therefore all the territories, seas, waters, and harbors, with their appurtenances, lying between the line above described and the southern line of the state of Virginia, which begins on the sea shore in thirty-six degrees thirty minutes, north latitude, and from thence runs west, agreeable to the said charter of King Charles, are the right and property of the people of this state, to be held by them in sovereignty, any partial line without the consent of the legislature of this state, at any time thereafter directed or laid out, in any wise notwithstanding. *Provided always*, That this Declaration of Rights shall not prejudge any nation or nations of Indians, from enjoying such hunting grounds as may have been, or hereafter shall be secured to them by any former or future legislature of this state. *And provided also*, That it shall not be construed so as to prevent the establishment of one or more governments westward of this, by consent of the legislature.* *And provided further*, That nothing herein contained, shall affect the titles of possessions of individuals, holding or

* In the year 1789 the Legislature of this State ceded to the Congress of the United States, "all right, title and claim, which this State had to the sovereignty and territory of the lands situate within the chartered limits of this State, west of a line beginning on the extreme height of the Stone Mountain, at the place where the Virginia line intersects it, running thence

claiming under the laws heretofore in force, or grants heretofore made by the late King George the Third, or his predecessors, or the late Lords Proprietors, or any of them.

R. CASWELL, *President*

December the 17th day, A. D. 1776, read the third time, and ratified in open Congress.

(Copy, Test.)

J. GLASGOW, *Secretary.*

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along the extreme height of the said mountain to the place where Wataugo River breaks through it, thence a direct course to the top of the Yellow Mountain, where Bright's road crosses the same, thence along the ridge of the said mountain between toe waters of Doe River and the waters of Rock Creek, to the place where the road crosses the Iron Mountain, from thence along the extreme height of said Mountain to where Nolichucky River runs through the same, thence to the top of the Bald Mountain, thence along the extreme height of said Mountain to the Painted Rock on French Broad River, along the highest ridge of the said Mountain to the place where it is called the Great Iron or Smoaky Mountain, thence along the extreme height of said Mountain to the place where it is called Unicoy or Unaka Mountain, between the Indian towns of Cowee and Old Chota, thence along the main ridge of the said Mountain to the southern boundary of this State." And the Congress in the following year, accepted this cession.

THE

CONSTITUTION.

The CONSTITUTION or FORM OF GOVERNMENT agreed to and resolved upon by the Representatives of the Freemen of the State of NORTH-CAROLINA, elected and chosen for that particular purpose, in Congress assembled, at Halifax, the Eighteenth Day of December, in the Year of our Lord one thousand seven hundred and seventy-six.

WHEREAS allegiance and protection are in their nature reciprocal, and the one should of right be refused when the other is withdrawn.—And whereas George the Third, King of Great Britain, and late sovereign of the British American colonies, hath not only withdrawn from them his protection, but by an act of the British legislature declared the inhabitants of these states out of the protection of the British Crown, and all their property found upon the high seas liable to be seized and confiscated to the uses mentioned in the said act. And the said George the Third has also sent fleets and armies to prosecute a cruel war against them, for the purpose of reducing the inhabitants of the said colonies to a state of abject slavery. In consequence whereof, all government under the said King within the said colonies, has ceased, and a total dissolution of government in many of them hath taken place. And whereas the Continental Congress having considered the premises, and other previous violations of the rights of the good people of America, have therefore declared, that the Thirteen United Colonies are of right, wholly absolved from all allegiance to the British Crown, or any other foreign jurisdiction whatsoever, and that the said colonies now are and forever shall be, free and independent states. Wherefore, in our present state, in order to prevent anarchy and confusion, it becomes necessary that a government should be established in this state. Therefore, we, the representatives of the freemen of North-Carolina, chosen and assembled in Congress for the express purpose of framing a Constitution under the authority of the people, most conducive to their happiness and prosperity, do declare that a government for this state, shall be established in manner and form following, *to wit*:

Section I.

That the legislative authority shall be vested in two distinct branches, both dependent on the people, *to wit*, a Senate and House of Commons.

II.

That the Senate shall be composed of Representatives annually chosen by ballot, one from each county in this state.

III.

That the House of Commons shall be composed of Representatives annually chosen by ballot, two for each county; and one for each of the towns of Edenton, Newbern, Wilmington, Salisbury, Hillsborough and Halifax.*

* By an ordinance of the Convention which met in 1789, it is ordained and declared, that the town of Fayetteville shall also be represented in the General Assembly.

IV.

That the Senate and House of Commons, assembled for the purpose of legislation, shall be denominated the General Assembly.

V.

That each member of the senate shall have usually resided in the county in which he is chosen, for one year immediately preceding his election: and for the same time shall have possessed, and continue to possess, in the county which he represents, not less than three hundred acres of land in fee.

VI.

That each member of the House of Commons shall have usually resided in the county in which he is chosen, for one year immediately preceding his election, and for six months shall have possessed, and continue to possess, in the county which he represents, not less than one hundred acres of land in fee, or for the term of his own life.

VII.

That all freemen of the age of twenty-one years, who have been inhabitants of any one county within the state twelve months immediately preceding the day of any election, and possessed of a freehold within the same county of fifty acres of land for six months next before and at the day of election, shall be entitled to vote for a member of the Senate.

VIII.

That all freemen of the age of twenty-one years, who have been inhabitants of any county within this state twelve months immediately preceding the day of any election, and shall have paid public taxes, shall be entitled to vote for members of the House of Commons for the county in which he resides.

IX.

That all persons possessed of a freehold in any town in this state having a right of representation, and also all freemen who have been inhabitants of any such town twelve months next before and at the day of election and shall have paid public taxes, shall be entitled to vote for a member to represent such town in the House of Commons. *Provided always*, That this section shall not entitle any inhabitant of such town to vote for members of the House of Commons for the county in which he may reside; nor any freeholder in such county, who resides without or beyond the limits of such town, to vote for a member for said town.

X.

That the Senate & House of Commons when met, shall each have power to choose a Speaker and other their officers, be judges of the qualifications and elections for their members, sit upon their own adjournments from day to day, and prepare bills to be passed into laws: The two houses shall direct writs of election for supplying intermediate vacancies, and shall also jointly by ballot adjourn themselves to any future day and place.

XI.

That all bills shall be read three times in each house before they pass into laws, and be signed by the Speaker of both houses.

XII.

That every person who shall be chosen a member of the Senate or House of Commons, or appointed to any office or place of trust, before

taking his seat, or entering upon the execution of his office, shall take an oath to the state; and all officers shall also take an oath of office.

XIII.

That the General Assembly shall, by joint ballot of both houses, appoint Judges of the supreme courts of law and equity, Judges of Admiralty, and an Attorney-General, who shall be commissioned by the Governor and hold their offices during good behaviour.

XIV.

That the Senate and House of Commons shall have power to appoint the Generals and Field-Officers of the militia, and all officers of the regular army of this state.

XV.

That the Senate and House of Commons, jointly at their first meeting after each annual election, shall by ballot elect a Governor for one year; who shall not be eligible to that office longer than three years in six successive years: That no person under thirty years of age, and who has not been a resident in this state above five years, and having in the state a freehold in lands and tenements above the value of one thousand pounds, shall be eligible as Governor.

XVI.

That the Senate and House of Commons, jointly at their first meeting after each annual election, shall by ballot elect seven persons to be a Council of State for one year; who shall advise the Governor in the execution of his office; and that four members shall be a quorum: Their advice and proceedings shall be entered in a journal to be kept for that purpose only, and signed by the members present; to any part of which any member present may enter his dissent; and such journal shall be laid before the General Assembly when called for by them.

XVII.

That there shall be a Seal of this State, which shall be kept by the Governor, and used by him as occasion may require; and shall be called the great seal of the state of North-Carolina, and be affixed to all grants and commissions.

XVIII.

That the Governor for the time being, shall be Captain-General and Commander in Chief of the militia; and in the recess of the General Assembly shall have power, by and with the advice of the Council of State, to embody the militia for the public safety.

XIX.

That the Governor for the time being, shall have power to draw for and apply such sums of money as shall be voted by the General Assembly for the contingencies of Government, and be accountable to them for the same. He also may, by and with the advice of the Council of State, lay embargoes, or prohibit the exportation of any commodity, for any term not exceeding thirty days at any one time, in the recess of the General Assembly; and shall have the power of granting pardons and reprieves, except where the prosecution shall be carried on by the General Assembly, or the law shall otherwise direct; in which case he may, in the recess, grant a reprieve until the next sitting of the General Assembly;—and may exercise all the other executive powers of Government, limited and restrained as by this Constitution is mentioned, and according to the laws of the State; and on his death, inability, or absence from the State, the Speaker of the Senate for the time being, and in case of his death, in-

ability, or absence from the State, the Speaker of the House of Commons shall exercise the powers of Governor, after such death, or during such absence or inability of the Governor or Speaker of the Senate, or until a new nomination is made by the General Assembly.

XX.

That in every case where any officer, the right of whose appointment is by this Constitution vested in the General Assembly, shall, during their recess die, or his office by other means become vacant, the Governor shall have power, with the advice of the Council of State, to fill up such vacancy by granting a temporary commission, which shall expire at the end of the next session of the General Assembly.

XXI.

That the Governor, Judges of the Supreme Courts of Law and Equity, Judges of Admiralty, and Attorney General, shall have adequate salaries during their continuance in office.

XXII.

The General Assembly shall, by joint ballot of both Houses, annually, appoint a Treasurer or Treasurers for this State.

XXIII.

That the Governor and other officers, offending against the State by violating any part of this Constitution, mal-administration, or corruption, may be prosecuted on the impeachment of the General Assembly, or presentment of the grand jury of any court of supreme jurisdiction in this State.

XXIV.

That the General Assembly shall, by joint ballot of both Houses, triennially appoint a Secretary.

XXV.

That no persons who heretofore have been, or hereafter may be receivers of public monies, shall have a seat in either House of the General Assembly, or be eligible to any office in this State, until such person shall have fully accounted for and paid into the Treasury all sums for which they may be accountable and liable.

XXVI.

That no Treasurer shall have a seat in either the Senate, House of Commons, or Council of State, during his continuance in office, or before he shall have finally settled his accounts with the public, for all monies which may be in his hands at the expiration of his office, belonging to the State, and hath paid the same into the hands of the succeeding Treasurer.

XXVII.

That no officer in the regular army or navy in the service and pay of the United States, of this or any other State, nor any contractor or agent for supplying such army or navy with clothing or provisions, shall have a seat in either the Senate, House of Commons, or Council of State, or be eligible thereto; and any Member of the Senate, House of Commons, or Council of State, being appointed to and accepting of such office, shall thereby vacate his seat.

XXVIII.

That no Member of the Council of State shall have a seat either in the Senate or House of Commons.

XXIX.

That no Judge of the Supreme Court of Law or Equity, or Judge of Admiralty, shall have a seat in the Senate, House of Commons, or Council of State.

XXX.

That no Secretary of this State, Attorney General, or Clerk of any Court of Record, shall have a seat in the Senate, House of Commons, or Council of State.

XXXI.

That no Clergyman, or Preacher of the Gospel, of any denomination, shall be capable of being a Member of either the Senate House of Commons, or Council of State, while he continues in the exercise of the pastoral function.

XXXII.

That no person who shall deny the Being of God, or the truth of the Protestant Religion, or the divine authority of the Old or New Testament, or who shall hold religious principles incompatible with the freedom and safety of the State, shall be capable of holding any office or place of trust or profit in the civil department, within this State.

XXXIII.

That the Justices of the Peace within the respective counties within this State, shall in future be recommended to the Governor for the time being, by the Representatives in General Assembly, and the Governor shall commission them accordingly. And the Justices, when so commissioned, shall hold their offices during good behaviour and shall not be removed from office by the General Assembly unless for misbehaviour, absence, or inability.

XXXIV.

That there shall be no establishment of any one religious Church in this State in preference to any other; neither shall any person, on any pretence whatsoever, be compelled to attend any place of worship, contrary to his own faith or judgment, nor be obliged to pay for the purchase of any glebe, or the building of any house of worship, or for the maintenance of any minister or ministry, contrary to what he believes right, or has voluntarily and personally engaged to perform. But all persons shall be at liberty to exercise their own mode of worship. Provided, that nothing herein contained shall be construed to exempt preachers of treasonable or seditious discourses from legal trial and punishment.

XXXV.

That no person in the State shall hold more than one lucrative office at any one time. Provided, that no appointment in the militia, or to the office of a Justice of the Peace, shall be considered as a lucrative office.

XXXVI.

That all Commissions and grants shall run in the name of the State of North-Carolina, and bear test and be signed by the Governor;—and all Writs run in the same manner, and bear test and be signed by the Clerks of the respective Courts;—and Indictments shall conclude, 'against the peace and dignity of the State.'

XXXVII.

That the Delegates for this State to the Continental Congress, while necessary, shall be chosen annually by the General Assembly, by ballot, but may be superseded in the mean time, in the same manner; and no

person shall be elected to serve in that capacity more than three years successively.

XXXVIII.

That there shall be a Sheriff, Coroner, or Coroners, and Constables, in each county within this State.

XXXIX.

That the person of a debtor, where there is not a strong presumption of fraud, shall not be confined in prison after delivering up, bona fide, all his estate, real and personal, for the use of his creditors, in such manner as shall be hereafter regulated by law. All prisoners shall be bailable by sufficient sureties, unless for capital offences, when the proof is evident or the presumption great.

XL.

That every foreigner who comes to settle in this State, having first taken an oath of allegiance to the same, may purchase, or by other just means acquire, hold, and transfer land, or other real estate; and after one year's residence shall be deemed a free citizen.

XLI.

That a School or Schools shall be established by the Legislature for the convenient instruction of youth, with such salaries to the masters, paid by the public, as may enable them to instruct at low prices; and all useful learning shall be duly encouraged and promoted in one or more universities.

XLII.

That no purchase of lands shall be made of the Indian natives, but on behalf of the public, and by authority of the General Assembly.

XLIII.

That the future Legislature of this State shall regulate entails in such a manner as to prevent perpetuities.

XLIV.

That the Declaration of Rights is hereby declared to be part of the Constitution of this State, and ought never to be violated on any pretence whatever.

XLV.

That any Member of either House of the General Assembly, shall have liberty to dissent from, and protest against any Act or Resolve which he may think injurious to the public or any individual, and have the reasons of his dissent entered on the Journals.

XLVI.

That neither house of the General Assembly shall proceed upon public business, unless a majority of all the members of such house are actually present; and that upon a motion made and seconded, the yeas and nays upon any question shall be taken and entered on the journals; and that the journals of the proceedings of both Houses of the General Assembly, shall be printed and made public immediately after their adjournment.

This Constitution is not intended to preclude the present Congress from making a temporary provision for the well ordering of this State, until the General Assembly shall establish government agreeable to the mode herein before prescribed.

R. CASWELL. *President.*

December the 18th day, A.D. 1776, read the third time, and ratified in open Congress.

JAS. GREEN, jun. *Secretary.*

Copy. (*Test.*) J. GLASGOW, *Secretary.*

THE

CONSTITUTION

OF THE

UNITED STATES OF AMERICA;

As proposed by the Convention, held at Philadelphia, Sept. 17, 1787, and since ratified by the several States, with the several amendments thereto.

WE, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, DO ordain and establish this Constitution for the United States of America.

ARTICLE I.

SECTION I.

All Legislative powers herein granted shall be vested in a CONGRESS of the United States, which shall consist of a Senate and House of Representatives.

SECTION II.

The House of Representatives shall be composed of members chosen every second year, by the people of the several states; and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several States which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each state shall have at least one Representative; and until such enumeration shall be made, the State of New-Hampshire shall be entitled to choose three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New-Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North-Carolina five, South-Carolina five, and Georgia three.

When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their Speaker and other officers, and shall have the sole power of impeachment.

SECTION III.

The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six years; and each Senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen by resignation or otherwise, during the recess of the legislature of any State, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

The Vice-President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

The Senate shall choose their other officers, and also a President *pro tempore*, in the absence of the Vice President, or when he shall exercise the office of President of the United States.

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no person shall be convicted without the concurrence of two thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

SECTION IV.

The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by law, make or alter such regulations, except as to the places of choosing Senators.

The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

SECTION V.

Each House shall be the judge of the elections, returns, and qualifications of its own members; and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorised to compel the attendance of absent members, in such manner and under such penalties as each House may provide.

Each House may determine the rules of its proceedings, punish its members for disorderly behaviour, and with the concurrence of two thirds, expel a member.

Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such part as may in their judgment require secrecy; and the yeas and nays of the members of either House on any question, shall, at the desire of one fifth of those present, be entered on the journal.

Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

SECTION VI.

The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

No Senator or Representative shall, during the time for which he was elected be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either House during his continuance in office.

SECTION VII.

All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve, he shall sign it; but if not, he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration, two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a law. But in all such cases, the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

Every order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

SECTION VIII.

The Congress shall have power—

To lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States. But all duties, imposts, and excises shall be uniform throughout the United States:

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes:

To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies, througout the United States:

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures:

To provide for the punishment of counterfeiting the securities and current coin of the United States:

To establish post offices and post roads:

To promote the progress of science and the useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries:

To constitute tribunals inferior to the supreme court; to define and punish piracies and felonies committed on the high seas, and offences against the law of nations:

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water:

To raise and support armies; but no appropriation of money to that use, shall be for a longer term than two years:

To provide and maintain a navy:

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions:

To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings:—And

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

SECTION IX.

The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year 1808. But a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder, or ex post facto law, shall be passed.

No capitation, or other direct tax, shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

No tax or duty shall be laid on articles exported from any state. No preference shall be given by any regulation of commerce or revenue, to the ports of one state over those of another. Nor shall vessels bound to or from one state, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury but in consequence of appropriations made by law. And a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States. And no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state.

SECTION X.

No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts; or grant any title of nobility.

No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws. And the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress. No state shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

SECTION I.

The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and together with the Vice-President, chosen for the same term, be elected as follows:

Each State shall appoint in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

The electors shall meet in their respective States, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign, and certify, and transmit sealed, to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed. And if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose, by ballot, one of them for President; and if no person have a majority, then from the five highest on the list, the said House shall, in like manner, choose the President. But in choosing the President, the votes shall be taken by states; the representation from each state having one vote. A quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of

all the states shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors, shall be the Vice-President*. But if there should remain two or more who have equal votes, the Senate shall choose from them, by ballot, the Vice-President.

The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person, except a natural born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President. Neither shall any person be eligible to that office, who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President; and the Congress may by law provide for the case of removal, death, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

The President shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Before he enter on the execution of his office, he shall take the following oath or affirmation:

"I do solemnly swear [or affirm] that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States."

SECTION II.

The President shall be Commander in Chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States. He may require the opinion in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and, by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the Congress may, by law, vest the appointment of such inferior officers as they think proper, in the President alone, in the courts of law, or in the heads of departments.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

SECTION III.

He shall, from time to time, give to the Congress information of the state of the union, and recommend to their consideration, such measures

* This mode of election is changed by the last amendment to the Constitution.

as he shall judge necessary and expedient. He may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper. He shall receive ambassadors and other public ministers. He shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

SECTION IV.

The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

SECTION I.

The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the Congress may, from time to time, ordain and establish. The judges both of the supreme and inferior courts, shall hold their offices during good behaviour; and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

SECTION II.

The judicial power shall extend to all cases in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States, between a State and citizens of another State, between citizens of different States, between citizens of the same State claiming lands under grants of the different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

SECTION III.

Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

ARTICLE IV.

SECTION I.

Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other state. And the Congress

may, by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

SECTION II.

The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

No person held to service or labour in one State, under the laws thereof, escaping into another, shall in consequence of any law or regulation therein, be discharged from such service or labour, but shall be delivered up on claim of the party to whom such service or labor may be due.

SECTION III.

New States may be admitted by the Congress into this union. But no new State shall be formed or erected within the jurisdiction of any other State, nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned, as well as of the Congress.

The Congress shall have power to dispose of, and make all needful rules and regulations respecting the territory, or other property belonging to the United States. And nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

SECTION IV.

The United States shall guarantee to every State in this Union, a Republican form of government, and shall protect each of them against invasion; and, on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

ARTICLE V.

The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a Convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three-fourths of the several states, or by Conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress. Provided, that no amendment, which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first Article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI.

All debts contracted, and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the confederation.

This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby; any thing in the Constitution or laws of any state to the contrary notwithstanding.

The Senators and Representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution. But no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

The ratification of the Conventions of nine states, shall be sufficient for the establishment of this Constitution between the states so ratifying the same.

Done in Convention, by the unanimous consent of the States present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the Independence of the United States of America the twelfth. In witness whereof, we have hereunto subscribed our names.

GEORGE WASHINGTON, President
and Deputy from Virginia.

NEW-HAMPSHIRE.

John Langdon, *Nicholas Gilman.*

MASSACHUSETTS.

Nathaniel Gorham, *Rufus King.*

CONNECTICUT.

William Samuel Johnson, *Roger Sherman.*

NEW-YORK.

Alexander Hamilton.

NEW-JERSEY.

William Livingston, *William Paterson,*
David Brearley, *Jonathan Dayton.*

PENNSYLVANIA.

Benjamin Franklin, *Thomas Fitzsimons,*
Thomas Mifflin, *Jared Ingersol,*
Robert Morris, *James Wilson,*
George Clymer, *Governeur Morris.*

DELAWARE.

George Read, *John Dickinson,*
Gunning Bedford, Jun. *Richard Bassett,*
Jacob Broom.

MARYLAND.

James M'Henry, *Dan. of St. Thos. Jenifer,* *Dan. Carroll.*

VIRGINIA.

John Blair, *James Madison, Jun.*

NORTH-CAROLINA.

William Blount, *Richard Dobbs Spaight,* *Hugh Williamson.*

SOUTH-CAROLINA.

J. Rutledge, *Charles Pinckney,*
Charles Cotesworth Pinckney, *Pierce Butler.*

GEORGIA.

William Few, *Abraham Baldwin.*

Attest, WILLIAM JACKSON, Secretary.

IN CONVENTION: *Monday, September 17, 1787.*

Present—The States of New-Hampshire, Massachusetts, Connecticut, Mr. Hamilton from New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina, and Georgia.

Resolved, That the preceding Constitution be laid before the United States in Congress assembled, and that it is the opinion of this Convention that it should afterwards be submitted to a Convention of Delegates, chosen in each State by the people thereof under the recommendation of its Legislature, for their assent and ratification; and that each Convention assenting to, and ratifying the same, should give notice thereof to the United States, in Congress assembled.

Resolved, That it is the opinion of this Convention, that as soon as the Conventions of nine States shall have ratified this Constitution, the United States in Congress assembled should fix a day on which electors should be appointed by the States which shall have ratified the same, and a day on which the electors should assemble to vote for the President, and the time and place for commencing proceedings under this Constitution.—That after such publication, the electors should be appointed, and the Senators and Representatives elected. That the electors should meet on the day fixed for the election of the President, and should transmit their votes certified, signed, sealed and directed, as the Constitution requires, to the Secretary of the United States, in Congress assembled. That the Senators and Representatives should convene at the time and place assigned. That the Senators should appoint a President of the Senate, for the sole purpose of receiving, opening, and counting the votes for President. And, that after he shall be chosen, the Congress, together with the President, should, without delay, proceed to execute this Constitution.

By the unanimous order of the Convention.

GEORGE WASHINGTON, President.

W. JACKSON, Secretary.

In CONVENTION: September 17, 1787.

SIR,

We have now the honour to submit to the consideration of the United States in Congress assembled, that Constitution which has appeared to us the most advisable.

The friends of our country have long seen and desired that the power of making war, peace, and treaties, that of levying money, and regulating commerce, and the correspondent executive and judicial authorities, should be fully and effectually vested in the general government of the Union. But the impropriety of delegating such extensive trust to one body of men, is evident. Hence results the necessity of a different organization.

It is obviously impracticable in the Federal Government of these States, to secure all rights of independent sovereignty to each, and yet provide for the interest and safety of all. Individuals entering into society, must give up a share of liberty to preserve the rest. The magnitude of the sacrifice must depend as well on situation and circumstance, as on the object to be obtained. It is at all times difficult to draw, with precision,

the line between those rights which must be surrendered, and those which may be reserved; and on the present occasion this difficulty was increased by a difference among the several states as to their situation, extent, habits, and particular interests.

In all our deliberations on this subject, we kept steadily in our view, that which appears to us the greatest interest of every true American, the consolidation of our Union, in which is involved our prosperity, felicity, safety, and perhaps our national existence. This important consideration, seriously and deeply impressed upon our minds, led each State in the Convention to be less rigid on points of inferior magnitude, than might have been otherwise expected; and thus the Constitution, which we now present, is the result of a spirit of amity, and of that mutual deference and concession which the peculiarity of our political situation rendered indispensable.

That it will meet the full and entire approbation of every State, is not, perhaps, to be expected. But each will doubtless consider, that had her interest been alone consulted, the consequences might have been particularly disagreeable or injurious to others. That it is liable to as few exceptions as could reasonably have been expected, we hope and believe. That it may promote the lasting welfare of that country so dear to us all, and secure her freedom and happiness, is our most ardent wish.

With great respect, we have the honour to be,

Sir, Your Excellency's most ob't. h'ble. s'vts.

GEORGE WASHINGTON, President.

By unanimous order of the Convention.

His Excellency the President of Congress.

CONGRESS OF THE UNITED STATES;

Begun and held at the City of New-York, on Wednesday, the the Fourth day of March, One Thousand Seven Hundred and Eighty-Nine.

The Conventions of a number of States, having, at the time of their adoption of the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added. And, as extending the ground of public confidence in the government, will best ensure the beneficent ends of its institution:

Resolved, by the Senate and House of Representatives of the United States of America, in Congress assembled, two-thirds of both Houses concurring, That the following articles be proposed to the Legislatures of the several States, as amendments to the Constitution of the United States, all or any of which articles, when ratified by three-fourths of the said Legislatures, to be valid to all intents and purposes, as part of the said Constitution, viz.

Articles in addition to and in amendment of the Constitution of the United States of America, proposed by Congress to be ratified by the Legislatures of the several States, pursuant to the Fifth Article of the original Constitution.

ARTICLE THE FIRST.

After the first enumeration required by the First Article of the Constitution, there shall be one Representative for every thirty thousand persons, until the number shall amount to one hundred; after which the proportion shall be so regulated by Congress, that there shall be not less than one hundred Representatives, nor less than one Representative for every forty thousand persons; until the number of Representatives shall amount to two hundred. After which, the proportion shall be so regulated by Congress, that there shall be not less than two hundred Representatives, nor more than one Representative for every fifty thousand persons.

Article the Second.—No law varying the compensation for the services of the Senators and Representatives, shall take effect until an election of Representatives shall have intervened.

Article the Third.—Congress shall make no law respecting an establishment of Religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Article the Fourth.—A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

Article the Fifth.—No soldier shall in time of peace be quartered in any house, without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

Article the Sixth.—The right of the people, to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. And no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article the Seventh.—No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Article the Eighth.—In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favour, and to have the assistance of counsel for his defence.

Article the Ninth.—In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact, tried by a jury, shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

Article the Tenth.—Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Article the Eleventh.—The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Article the Twelfth.—The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Article the Thirteenth.—The Judicial Power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.

ADDITIONAL AMENDMENT.

The Electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom at least, shall not be an inhabitant of the same State with themselves. They shall name in their ballots the person voted for as Vice-President; and in distinct ballots, the person voted for as President; and they shall make distinct lists of all persons voted for as President and of all persons voted for as Vice-President, and of the number of votes for each; which lists they shall sign and certify and transmit sealed to the seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates; and the votes shall then be counted. The person having the

some other Justice of the Peace for the said county, to answer the said complaint, and to be further dealt with according to law.

Given under my hand and seal, the day of , in the year of our Lord

BAIL.

(*Form of.*)

State of North-Carolina, Wake County.

Be it remembered, that on the day of , in the year of our of Lord, A B, of , planter, B C, of , planter, and C D, of , planter, came before me, D E, one of the Justices of the Peace for the said county, and severally acknowledged themselves to owe to the State of North-Carolina, that is to say, the said A B one hundred pounds, and the said B C and C D fifty pounds each, to be respectively levied of their lands and tenements, goods, and chattels, if the said A B shall make default in the performance of the condition underwritten.

D. E.

The condition of this recognizance is such, that if the within bound A B, shall personally appear before the Justices of the court of pleas and quarter sessions, in and for the said county, at the next court of pleas and quarter sessions to be held for the said county, at , on the day of next, or before the Judges of the superior court of law to be held for the district of , at the courthouse in , on the day of next, [as the case may be], then and there to answer to the said State, for and concerning the felonious taking and stealing of , the property of , of , with the suspicion whereof the said A B stands charged before me, the said Justice, and to do and receive what shall by the court be then and there enjoined him, and shall not depart the court without leave, then the above written recognizance shall be void.

BARRATRY.

State of North-Carolina, Wake County.

To A B one of the Constables for the said County, and to all other lawful officers.

Whereas complaint upon oath hath been made unto me , one of the justices of the peace in and for the said county, that A B of , in the said county, planter, on the day of , in the year of our Lord , and on divers other days and places within the county aforesaid, was and yet is a common barrator, and daily disturber of the peace of this state, and also a common brawler, wrangler, fighter, scandalizer, and sower of sedition, suits and discords between his neighbours, and other the good citizens of this state, to the great damage and disturbance of the said citizens, and against the peace of this State, and to the evil example of all others in the like case offending. These are, therefore, to command you forthwith to bring the said A B before me to answer unto the said complaint, and to find sureties for his personal appearance at the

next court of pleas and quarter sessions to be holden for the said county, then and there to answer unto an indictment on the behalf of this state, to be preferred against him for the said offences. Herein fail not upon the peril that shall ensue thereon.

Given under my hand and seal the day of , in the year of our Lord

F. G.....(seal.)

BASTARDY.

Warrant to apprehend a single Woman with Child of a Bastard.

State of North-Carolina, Wake County. ss.

To A B, one of the Constables of the said County, and to all lawful officers.

Whereas information hath been made to us, two of the Justices of the Peace for the said county, that B C, of the said county, single woman, is with child, which child when it shall be born will be a bastard, and may become chargeable to the county: These are therefore to command you to apprehend and bring before us, or any two Justices of the Peace for the said county, the aforesaid B C, to answer the matters alleged against her as aforesaid, for which this shall be your sufficient warrant.

Given under our hands and seals at , in the said county, the day of , in the year of our Lord .

Her Examination when brought before the Justices.

Wake County, ss.

The examination of B C, in the said county, single woman, taken on oath before us C D and E F, two of the Justices of the Peace in and for the said county, this day of , in the year of our Lord Who saith, that she is now with child, and that the said child is likely to be born a bastard, and to be chargeable to the county aforesaid, and that G H, of , in the said county, planter, is the father of the said child.

B. C. [the woman's name.]

Taken before us, and signed the day and year above written.

C. F.

E. D.

Warrant against the reputed Father.

State of North-Carolina, Wake County, ss.

To A B, one of the Constables in the said county, and to all other lawful officers.

Whereas upon the examination of B C, single woman, this day taken on oath before us, it appears that she is now with child, which child when it shall be born will be a bastard, and may become chargeable to the said county; and the said B C, hath confessed that G D, of the county aforesaid, planter, did beget the said child, and hath charged him with the same: These are therefore to command you to apprehend the said

C D, and bring him before us, or any two Justices of the Peace for the said county, to answer the said charge.

Given under our hands and seals this day of , in the year of our Lord .

Recognizance.

State of North-Carolina, Wake-County.

Be it remembered, that on the day of , in the year of our Lord ; C D, of , planter, E F, of , planter, and F G, of , planter, came before us , and , two of the Justices of the Peace for the said county, and severally acknowledged themselves to owe to the State of North-Carolina, that is to say, the said C D, one hundred pounds, and the said E F and F G, fifty pounds each, to be respectively levied of their lands and tenements, goods and chattels, if the said C D shall make default in the performance of the condition underwritten.

H. L.
I. K.

The condition of this recognizance is such, whereas the above bounden C D is charged by B C of , single woman, that she the said B C is now with child by him the said C D, which child when born will be a bastard. If therefore the said C D shall personally appear before the Justices of the court of pleas and quarter sessions to be held for the aforesaid county of , at , on the day of , then and there to abide by and perform what shall there be enjoined him by the said court concerning the premises, then the above written recognizance shall be void.

Mittimus in case of a Refusal or Neglect to give Surety.

State of North-Carolina, Wake County.

To the Sheriff or Keeper of the Gaol of the county aforesaid.

We herewith send you the body of C D, of this county, planter, who was this day brought before us H I and I K, two of the Justices of the Peace for the said county, being charged by B C, single woman, to have gotten her with child, which child when born will be a bastard; and the said C D having before us, refused or neglected to find surety for his appearance at the next court of pleas and quarter sessions to be held for this county, to answer the said charge: These are therefore to command you to receive into your custody the said C D, and him safely to keep in the common gaol, until he shall be thence discharged by due course of law.

Given under our hands and seals the day of , in the year of our Lord .

H. I.....(seal)
I. K.....(seal)

Form of a Bond to be given by the reputed Father of a Bastard Child to indemnify the County from its Maintenance.

State of North Carolina, Wake County.

Know all men by these presents, that we , are held and firmly bound unto the Justices of the county aforesaid, in the sum of , to be paid to the said Justices or their successors in office. To the which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this , day of , A. D. 18 .

The condition of the above obligation is such that whereas the above bounden G H stands charged according to law with being the reputed fa-

ther of a bastard child of which A B has lately been delivered: now if the aforesaid G H, his heirs, executors or administrators, or any of them, do and shall from time to time, and at all times hereafter acquit, discharge and save harmless, the overseers of the poor and inhabitants of the county aforesaid, from all costs, charges, and trouble whatsoever, for and by reason of the birth, maintenance of, and bringing up, the said child, and of and from all suits, charges and demands whatsoever touching and concerning the same, then the above obligation to be void, otherwise to remain in full force and virtue.

BEHAVIOUR.

Warrant for the Good Behaviour.

State of North Carolina, Wake County.

To the Sheriff of the said county, and to all other lawful officers.

For asmuch as I, A B one of the Justices of the Peace in and for the said county, am given to understand by the information, testimony and complaint of many credible persons that B C of , in the county aforesaid, planter, and C D of , in the county aforesaid, planter, are not of good name and fame, nor of honest conversation, but evil doers, rioters, barrators, and disturbers of the peace of this state, so that murder, homicide, strifes, and other grievances and damages against the citizens of this State, concerning their bodies, are likely to arise thereby: These are therefore to command you, and every of you, that one of you do apprehend the aforesaid B C. and C D, and have them before me or some other Justice of the Peace for the said county as soon as they can be taken, [or thus, before the Justices of the court of pleas and quarter-sessions to be next holden for the said county] to find before me [or the said Justices] sufficient sureties for their good behaviour towards this State and all the citizens thereof. And this you shall in no wise omit, on the peril that shall ensue thereon, and have you before me [or the said Justices at the said court] this precept.

Given under my hand and seal, at , in the county aforesaid, the day of in the year of our Lord .

A. B.....(seal)

Warrant for the Peace or Good Behaviour.

State of North-Carolina, Wake County.

To the Sheriff of the said County, and the Constables thereof, and to all other lawful officers in and for the said County.

For as much as A B of in the said county, planter, hath personally come before me, B C, one of the Justices of the Peace in and for the said county, and hath taken a corporal oath, that he the said A B is afraid that C E, of , in the said county, planter, will beat him [or wound, maim, kill,] or do him some bodily hurt, and hath therefore prayed surety of the peace against him the said C E [or if for the good behaviour, that C E of in the said county, planter, hath threatened to do some bodily hurt to him the said A B, or to burn the house of him the said A B, and hath therefore prayed surety of the good behaviour against him the said C E.] These are therefore to command you, jointly and severally, that immediately upon the receipt thereof, you bring the said C E, before

me, to find surety, as well for his personal appearance at the next court of pleas and quarter sessions to be held for the said county, to be held at , in and for the said county, as also for his keeping the peace [or for his being of the good behaviour] in the mean time towards the state and all the citizens thereof, and chiefly towards the said A B.

Given under my hand and seal at , in the said county, the day of , in the year of our Lord .

B C.....(seal)

Recognizance, as under Bail, with this Condition.

The condition of this recognizance is such, that if the above bound C E shall personally appear at the court of pleas and quarter-sessions to be held for the said county, at , on the day of next, to do and receive what shall then and there be enjoined him by the court, and in the mean time shall keep the peace [or be of the good behaviour] towards this State and all the citizens thereof, and especially towards C B, of , in the said county, planter, then the said recognizance shall be void, or otherwise remain in full force.

Mittimus for want of Sureties.

State of North-Carolina, Wake County.

To E F, one of the Constables of the said County, and to the Keeper of the Common Gaol of, and in the said County.

Whereas C E, of , in the said county, planter, is now brought before me , one of the Justices of the Peace in and for the said county, requiring him to find sufficient sureties, to be bound with him in a recognizance, for his personal appearance at the court of pleas and quarter sessions to be next holden in and for the said county, and in the mean time to keep the peace [or be of the good behaviour] towards the said State and all the citizens thereof, and especially towards C B, of , in the said county, planter. And whereaas he the said C E, hath refused and doth now refuse before me to find such sureties: These are therefore to command you the said Constable, forthwith to convey the said C E, to the common gaol of the said county, and to deliver him to the keeper thereof there, together with this precept. And I also hereby command you the said keeper to receive the said C E into your custody in the said gaol, and him there safely to keep until he shall find such sureties as aforesaid.

Given under my hand and seal at , in the said county, the day of , in the year of our Lord .

[B C.....(seal).

If afterwards, or whilst the warrant is out against him, he finds sureties before a Justice of the Peace, then the Justice issues a Supersedeas thus:

Supersedeas.

State of North-Carolina, Wake County.

W P, Esq. one of the Justices of the Peace in and for the said County, to the Sheriff, Constables, and other the Ministers and Citizens of the said State.

Forasmuch as C E, in the said county, planter, hath personally been before me, at , in the said county, and hath found sufficient surety,

that is to say, W W, of , in the said county, and W E, of , in the said county, planters, each of whom hath undertaken for the said C E, under the pain of one hundred pounds, and he, the said C E, hath undertaken for himself, under the pain of two hundred pounds, that he, the said C E, shall personally appear at the next court of pleas and quarter sessions to be held for the said county, then and there to do and receive what shall be enjoined him by the said court, and in the mean time shall well and truly keep the peace [or be of the good behaviour] towards the said State and all the citizens thereof, and especially towards A B, of , in the said county. These are therefore to command you and every of you, that you utterly forbear and surcease to arrest, take, imprison, or otherwise by any means for the said cause to molest the said C E; and if you have for the said occasion and none other, taken and imprisoned him the said C E, that then him you deliver, or cause to be delivered, and set at liberty, without further delay.

Given at , in the said county, under my seal, the day of , in the year of our Lord

W P.....(seal.)

Form of the Oath for one that craves Surety of the Peace.

You shall swear, that you are in fear of death, or of some bodily hurt to be done, or to be procured to be done to you by C E, of , in the county of , planter, [or that he will burn your house] and that you do not require surety of the peace against him out of malice or for mere vexation, but for the cause aforesaid. So help you, God!

BURGLARY.

State of North-Carolina, Wake County.

To the Sheriff of the County, and to the Constables of the said County, and to all other lawful Officers.

Forasmuch as C B, of , in the county of , planter, hath this day made oath before me, B C, one of the Justices of the Peace in and for the said county, that yesterday in the night, the dwelling house of him the said C B, at aforesaid, in the county aforesaid, was feloniously and burglariously broken open, and of the value of , of the goods and chattels of him the said C B, feloniously and burglariously stolen and carried away from thence; and that he hath just cause to suspect that D E, late of , in the county of , planter, the said felony and burglary did commit. These are therefore to command you that immediately upon sight hereof, you do apprehend the said D E, and bring him before me to answer the premises, and to be further dealt with according to law. Herein fail not.

Given under my hand and seal, the day of , in the year of our Lord

B C.....(seal.)

For the *Mittimus*—See COMMITMENT.

BURNING.

(*Warrant for.*)

State of North-Carolina, Wake County.

To the Sheriff of the said County, and to the Constables thereof, and to all lawful Officers within the same.

Whereas A B, of , of the said county, hath this day appeared before me, B C, one of the Justices of the Peace in and for the said county, and made oath that C D, late of , in the county of , planter, did, on the day of , in the year of our Lord , maliciously and feloniously set fire to the dwelling house, [barn, or out house, as the case may be] of him the said A B, with intent to burn and destroy the same, and did consume the same [or consume the same in part] thereby. These are therefore to command you to apprehend the said C D, and bring him before me or some other Justice of the Peace for the said county, to answer the premises, and to be otherwise dealt with according to law.

Given under my hand and seal the day of , in the year of our Lord .

B C.....(seal.)

For the Form of the *Mittimus*—See COMMITMENT.

CATTLE, HORSES, AND HOGS.

State of North-Carolina, Wake County.

To A B, Constable, or to any lawful Officer of the said County.

Whereas B C hath this day complained to me C D, one of the Justices of the Peace in and for the said county, that D E did, on the day of , and at other days between the first day of April and the first day of November, drive into this State from the State of South-Carolina [or from the State of Georgia, as the case may be] a number of foul cattle, against the Act of Assembly in such case provided. These are therefore to command you to apprehend the said D E, and bring him before me, or some other Justice of the Peace, to answer the complaint aforesaid.

Given under my hand and seal the day of , in the year of our Lord .

C D.....(seal.)

Or thus: [beginning like the above Form.]

into , in the county of , where the soil is not sandy and where the natural growth of timber is not the long-leaf pine, from , in the county of , where the soil and natural growth of timber is such, a number, to wit, cattle, against the act, &c. [Here insert the proper concluding words of the above Form.]

Or thus: [beginning as above.]

into the county of , where the soil is sandy and the natural growth of the timber is the long-leaf pine, from , in the county

of , where the soil is not sandy and the natural growth of timber is not the long-leaf pine, a number, to wit, cattle, against the act, &c. [Concluding as above.]

Or thus: [beginning nearly as above.]

did, on the day of , in the year , drive into , in the county of , without a certificate and affidavit of the owner of the said cattle, as required by the Act of Assembly in that case provided, a number, to wit, cattle. These are therefore, &c. [as above.]

Form of a Warrant to summon Freeholders to view a Fence, &c.

State of North-Carolina, Wake County.

To A B, Constable, or other lawful Officer.

Whereas C D of this county, planter, hath complained to me, E F, Esq. one of the Justices of the Peace of the said county, that the horses [cattle, or hogs,] of G H, of the said county, have broken into his enclosed grounds under cultivation, and committed much damage to him the said C D. These are, therefore, in the name of the State to require you to summon two reputable and indifferent freeholders of the said county, to be and appear, with myself, at the plantation of the said C D, on the day of next, to examine and enquire whether the fence round the enclosed grounds of the said C D be lawful, agreeably to the directions of the Act of Assembly in that case made and provided, and what damage he the said C D hath sustained by means of the said trespass. Herein fail not.

Given under my hand this day of , in the year of our Lord

CHEATS.

Warrant.

State of North Carolina, Wake County,

To A B Constable, and to all lawful Officers within the said County.

Whereas complaint hath been made before me, G H, one of the Justices of the Peace in and for the said county, on the oath of , planter, that on the day of , in the year , one C D of , planter, did by a false privy token, or counterfeit letter, or by [as the case may be] falsely and deceitfully obtain and get into his hands and possession [here mention what] from C I of . These are thereforeto command you forthwith to bring the said C D before me or some other Justice of the Peace for the said county, to answer the said complaint, and further to be dealt with according to law.

Given under my hand and seal the , day of in the year of our Lord

G. H.....(seal.)

COMMITMENT.

Mittimus for Felony.

State of North Carolina, Wake County.

A B one of the Justices of the Peace for the said County, to the Keeper of the common Jail for the county of Wake.

Whereas B C late of , in the county of planter, hath been arrested by the Constable of , in the said county, for suspicion

of a felony committed by him the said B C in stealing a black mare, of the value of forty shillings, the property of D E of , in the said county [or , here describe the species of crime or felony he has committed] ; whereupon the said B C hath been duly examined by and before me concerning the same ; and the examination before me taken, do induce a strong presumption that he is guilty thereof ; These are therefore to command you to receive the said B C into your custody in the said jail, there to remain till he be delivered from your custody by the course of law.

Given under my hand and seal the , day of , in the year of our Lord.

A B.....(seal.)

If he is committed for want of Bail, thus :

And upon such examination before me had, he the said B C hath been by me required to give security in the sum of pounds, and two sureties each in the sum of pounds, for his personal appearance before the next superior court of law to be held for the county of at the court house at , on the day of , to answer to the said charge ; and the said B C having not given such security as aforesaid, but failing so to do : These are therefore, &c. till he do give such security as aforesaid, or be otherwise delivered from your custody by due course of law.

Given, &c.

CORONER.

Precept to summon a Jury,

State of North Carolina, Wake County.

To A B, one of the Constables of and in the said County.

These are to require you immediately upon sight hereof, to summon twenty-four good and lawful men of the said county, to be and appear before me, C D, one of the Coroners of the said County, at in the said County, on the day of , then and there to enquire of, do, and execute all such things as on behalf of the said State shall be lawfully given them in charge, touching the death of D E. And be you then there to certify what you shall have done in the premises, and further to do and execute what in behalf of the said State shall be then and there enjoined you.

Given under my hand and seal, the day of in the year of our Lord

C D.....(seal.)

INQUISITION OF MURDER.

State of North Carolina, Wake County.

An Inquisition indented, taken at , in the said county of Wake the day of , in the year of our Lord , before A C, one of the Coroners of and in the said County, upon the view of the body of A D, then and there lying dead, upon the oaths of A B, C D, &c. good and lawful

men of the county aforesaid, who being sworn and charged to enquire on the part of the State aforesaid, when, where, how, and after what manner the said A D came to his death, do say, upon their oath, that one A M, late of aforesaid, planter, not having God before his eyes, but being moved and seduced by the instigation of the Devil, on the day of , in the year of our Lord , aforesaid, at the first hour in the night of the same day, with force and arms, at , in the county aforesaid, on and upon the aforesaid A D, then and there being in the peace of God and of the said State, feloniously, voluntarily and of his malice aforethought, made an assault; and that the aforesaid A M, then and there with a certain sword made of iron and steel, of the value of five shillings, which he the said A M then and there held in his right hand, the aforesaid A D, in and upon the left part of the belly of the said A D, a little above the navel of the said A D, then and there violently, feloniously, voluntarily, and of his malice aforethought, struck and pierced, and gave to the said A D, then and there with the sword aforesaid, in and upon the aforesaid left part of the belly of the said A D, a little above the navel of the said A D, one mortal wound of the breadth of half an inch, and of the depth of three inches, of which said mortal wound the aforesaid A D, then and there instantly died; and so the said A M, then and there feloniously killed and murdered the said A D, against the peace and dignity of the State.

And the said jurors further say, upon their oath aforesaid, that A A, of , planter, and B A, of , planter, were feloniously present with drawn swords, at the time of the felony and murder aforesaid, in form aforesaid committed; that is to say, on the said day of , in the year aforesaid, at aforesaid, in the county aforesaid, at the first hour in the night of the said day, then and there comforting, abetting, and aiding the said A M, to do and commit the felony and murder aforesaid in manner aforesaid, against the peace and dignity of the State.

And moreover the jurors aforesaid, upon their oath aforesaid, do say, that the said A M, A A, and B A had not, nor any of them had, nor as yet have or hath any goods or chattels, lands or tenements, within the county aforesaid, or elsewhere, to the knowledge of the said jurors. [Or, And the jurors aforesaid, upon their oath aforesaid, do say, that the said A B, at the time of the doing and committing of the felony and murder aforesaid, had goods and chattels, contained in the inventory to this Inquisition annexed, which remain in the custody of B C.]

In witness whereof, as well the aforesaid coroner, as the jurors aforesaid, have to this Inquisition put their seals, on the day and year aforesaid, and at the place aforesaid.

A B.
C D. } &c. Jurors.
E F.

A C, Coroner.

An Inquisition where one Hangs Himself.

[Begin as above with the first 8 or 10 lines, and continue as follows:]

not having God before his eyes, but being seduced and moved by the instigation of the Devil, at aforesaid, in a certain wood at aforesaid standing and being, the said A D being then and there alone, with a certain hempen cord of the value of three pence, which he then and there had and held in his hands, and one end thereof then and there put about his neck, and the other end thereof tied about a bough of a certain oak tree, himself then and there with the cord aforesaid, voluntarily and feloniously and of his malice aforethought, hanged and suffocated; and so the jurors aforesaid, upon their oath aforesaid say, that the said A D then and there in manner and form aforesaid, as a felon of

himself. feloniously, voluntarily, and of his malice aforethought, himself killed, strangled, and murdered, against the peace and dignity of the State.

An Inquisition where one Drowns Himself.

[Begin as above, but with variations to suit the particular case.]

, at aforesaid, in the county aforesaid, then and there being alone, in a common river there, called , himself voluntarily and feloniously drowned; and so the jurors aforesaid, upon their oath aforesaid say, that the aforesaid A D, in manner and form aforesaid, then and there himself voluntarily and feloniously as a felon of himself killed and murdered; against the peace and dignity of the State.

An Inquisition where one dies a Natural Death.

[Begin, and vary it, to suit the particular case.]

, that the said A D, on the day of , in the year aforesaid, at , and in the county aforesaid, to wit, in a certain place called , was found dead. That he had no marks of violence appearing on his body, and died by the visitation of God, in a natural way; and not otherwise. In witness, &c.

An Inquisition upon one who dies in Jail.

, who say upon their oath, that the aforesaid A D, on the day of the taking of this Inquisition, being a prisoner in the jail at , in the county aforesaid, then and there died of the visitation of God, and then and there in manner and form aforesaid, came to his death; and not otherwise. In witness, &c.

An Inquisition on one Non Compos Mentis.

, who say upon their oath, that the aforesaid A D, on the day and year aforesaid, and at the time of his death, to wit, from the , day of , to the time of his death, and at the time of his death aforesaid, was a lunatic, and a person of insane mind; and that the said A D being a lunatic and a person of insane mind as aforesaid, did on the , day of , come alone to a certain river, called , in the said county, and did then and there cast himself into the said river, and drowned himself in the water of the said river. And so the jurors aforesaid, upon their oath aforesaid say, that the aforesaid A D, from the cause aforesaid, in manner and form aforesaid, came to his death, and not otherwise. In witness, &c.

An Inquisition on one for Cutting his Throat.

, by the instigation of the Devil, at aforesaid, in the county aforesaid, in and upon himself, then and there being in the peace of God and of the State, feloniously, voluntarily, and of his malice aforethought, made an assault: and that the aforesaid A D then and there with a certain knife of the value of one penny, which he the said A D then and there held in his right hand, himself upon his throat then and there feloniously, voluntarily, and of his malice aforethought did strike and give to himself then and there with the knife aforesaid upon his throat aforesaid, one mortal wound of the breadth of four inches and the depth of one inch, of which said mortal wound the said A D at aforesaid in the county aforesaid, languished, and languishing lived, from the said day of

in the year , aforesaid, to the day of , and that the said A D, on the day of , aforesaid, in the year aforesaid, at , aforesaid, in the county aforesaid, of that mortal wound died, And so the jurors aforesaid, &c.

For killing another in his own Defence.

upon their oaths say, that A K late of , planter, at , aforesaid in the said county, on the day of in the year , in the peace of God and the said state then being, A M late of in the county of , at the hour of , in the afternoon of the same day, did come, and upon him the said A K then and there of his malice aforethought did make an assault, and him the said A K did then and there endeavour to beat and kill, by continuing the assault aforesaid, from the house of one W H in aforesaid, to a certain place called , in the county aforesaid, and the said A K seeing that the said A M was so maliciously disposed, to a certain wall in the said place, called , did flee, and from thence for fear of death could not escape, and so the said A K himself, in preservation of his life, against the said A M continued to defend, and in his own defence him the said A M upon the right part of the breast of him the said A M with a certain sword of the price of one shilling, which the said A K then and there held in his right hand, did strike, then and there giving to the same A M one mortal wound, of the breadth of one inch and of the depth of three inches, of which said mortal wound the said A M at , aforesaid, in the county aforesaid, languished, and languishing lived from the said day of , to the day of from thence next ensuing; and that the said A M on the said day of , in the year , aforesaid, at aforesaid, in the said county, of that mortal wound died: and so, the said A K did then and there kill him the said A M in his own defence.

An Inquisition where the Murderer is unknown.

[The same as before, only say] , that a certain person unknown, &c. [and add] And the said jurors upon their oath aforesaid, further say, that the said person unknown, after he had committed the said felony and murder in manner aforesaid, did fly away: against the peace and dignity of the State, &c.

Evidence.

State of North-Carolina, Wake County.

The evidence of A B, of , in the said county, taken at , in the said county, on oath before me, C D, one of the Coroners of and in the said county, and also before the jury then and there sworn to enquire how A D, then and there lying dead, came to his death, who saith, that, &c.

A B.

Taken and subscribed before me,
the day of

C D.

Recognizance for Witnesses.

See *Bail, Criminals*—with this condition.

The condition of this Recognizance is such, that if the within bound A B shall personally appear before the judges of the superior court of law, to be holden for the county of Wake, at the court-house in the City of Ra-

leigh, on the day of next, in the year of our Lord , then and there to give evidence in behalf of the State, concerning the death of , and shall not depart the said court without leave, then the above written recognizance shall be void.

Taken before me, C D, one of the Coroners of and for the said county, the day of in the year of our Lord . C D.

COUNTERFEITING.

(Warrant for.)

State of North-Carolina, Wake County.

To A B, one of the Constables of the said County.

Whereas C B hath this day appeared before me, C D, one of the Justices of the Peace in and for the said county, and made oath that D E, of , in the said county, did on the day of , in the said county, feloniously counterfeit one bill of the denomination of shillings, to the likeness and similitude of a genuine bill of credit, emitted upon the credit of this State, pursuant to an act of Assembly passed in the year 1785.—These are therefore to command you, that immediately upon sight hereof, you do apprehend the said D E, and bring him before me to answer the premises, and to be further dealt with according to law. Herein fail not.

Given under my hand and seal at , in the said county, the day of , in the year of our Lord .

C. D.....(seal.)

If upon the act of 1783, say "did fraudently counterfeit."

If for "passing;" say—did pass to ; one counterfeit bill, of the denomination of forty shillings, to the likeness and similitude of a genuine bill of credit emitted pursuant to the act passed in the year 1785, as and for a genuine bill of the emission aforesaid, and that he hath just cause to suspect that the said D E, at the time of passing the same, knew the said bill to be false and counterfeit.—These are therefore, &c.

If for "uttering;" thus—did feloniously utter and deliver to one late of , one bill, of the denomination of forty shillings, counterfeited to the likeness and similitude of a genuine bill of credit, emitted pursuant to an Act of Assembly passed in the year 1785, with intent that he the said, , should pass the same to some of the citizens of this State, as and for a genuine bill of the emission aforesaid. These are therefore, &c.

CRIMINALS.

The Examination of a Person accused of any Criminal Matter, to which he must not be sworn.

State of North-Carolina, Wake County.

The Examination of A B of , in the county of , taken before me, C D, one of the Justices of the Peace of and in the said County, the day of , in the year of our Lord .

The said A B being charged before me by D E of , planter, with [Here insert the charge against him], upon his examination now taken before me, confesseth that, &c. or denieth that, &c.

Taken before me the day and year above written. C D.

A B.

Information of a Witness.

State of North-Carolina, Wake County.

The Evidence of B E of , in the said County, Planter, taken upon Oath before me, C D, one of the Justices of the Peace of and in the said County, the day of , in the year of our Lord .

The said B E of , being sworn by me on the Holy Evangelists, to speak the truth, the whole truth, and nothing but the truth, of and concerning the accusation made before me against A B who stands charged by D E of , planter, with [Here insert the charge] saith that, &c.

Taken before me the day and year above written. C D. B E.

For the *Recognizance*—See BAIL.

For the *Mittimus*—See COMMITMENT.

Recognizance of Witnesses for the State.

State of North-Carolina, Wake County.

Be it remembered, that on the day of , in the year of our Lord , G H of in the said county, planter, came before me C D, one of the Justices of the Peace of and in the said county, and did acknowledge himself to owe to this State one hundred pounds current money of this State, under condition that if he shall personally appear before the Judges of the superior court of law, at the next superior court of law to be holden in and for the county of Wake, at the courthouse in the city of Raleigh, on the day of , in the year of our Lord , then and there to give evidence in behalf of the State, against , late of , who being arrested and suspected of , is now committed to the common jail of and for the said county, then this recognizance to be void, otherwise of force.

Taken before me the day and year aforesaid. C D.

Recognizance to prosecute and give Evidence.

State of North-Carolina, Wake County.

Be it remembered, that on the day of , in the year of our Lord , G H of , in the said county, planter, personally came before me C D, one of the Justices of the Peace of and in the said county, and acknowledged himself to owe to the State of North-Carolina, the sum of one hundred pounds, current money of the said State, to be levied of his goods and chattels, lands and tenements, to the use of the said State, if he the said G H, shall fail in the condition underwritten. C D.

The condition of the above written Recognizance is such, whereas one A A, late of , was this present day brought before the Justice within mentioned, at the instance of the above bounden G H, and was by him charged with [Here specify the charge], and thereupon was committed by the said Justice to the common jail for the county of Wake. If therefore the said G H shall and do, at the next superior court of law to be held for the said county on the day of , in the year of our Lord , prefer, or cause to be preferred, one bill of indictment of the said felony, against the said A A, and shall then also give evidence there concerning

the same, as well to the jurors that shall then enquire of the said felony, as also to them that shall pass upon the trial of the said A A, that then the said recognizance to be void, or else to stand in full force for the said state.

If the party be bailable, then bind him as under BAIL, and the witnesses as above—except instead of saying, "the criminal is now committed to the common jail,"—say, "is now bound in recognizance then and there to appear before the said court to answer the charge aforesaid."

Warrant for a Witness.

State of North-Carolina, Wake County.

To A. B. one of the Constables of and in the said county.

Whereas oath hath been made before me C, D, one of the Justices of the Peace of and in the said county, by J S. that he the said J S was lately robbed of and that he hath good cause to believe that G H is a material witness to prove by whom the said robbery was committed: These are therefore to require you to cause the said G H forthwith to come before me, to give such information and evidence as he knoweth concerning the said offence, and that such further proceedings may be had thereon as to the law doth appertain. Given under my hand and seal at in the said county, the day of in the year of our Lord 18

C. D.....(seal)

If the criminal be to be committed, see Mittimus, under COMMITMENT: if to be bailed, see Recognizance, under BAIL.

CAPIAS AD RESPONDENDUM.

Form of a Writ of Capias ad Respondendum.

State of North Carolina, Wake County.

To the Sheriff of Wake County, greeting.

We command you that you take the body of A B (if to be found in your bailiwick) and him safely keep, so that you have his body before the Justices of our court of pleas and quarter sessions, to be held for the county of , at the court-house in , on the day of next; then and there to answer of a plea of trespass on the case, to the damage of him the said twenty pounds. Herein fail not, and have you then and there this writ. Witness , Clerk of our said court, at the day of , and in the year of our Independence.

DEEDS.

Form of a Deed of Bargain and Sale for Lands.

This Indenture, made the day of , in the year of our Lord one thousand eight hundred and , between of the one part, and of the other part, Witnesseth, that for and in consideration of the sum of to the said in hand paid by the said at or before the sealing and delivery of these presents, the receipt whereof he doth hereby acknowledge, and therefore doth release, acquit and discharge the said , his executors and administrators; by these presents, he the said granted, bargained, sold, aliened and confirmed, and by these presents doth grant, bargain, sell, alien and confirm, unto the said and his heirs, a certain piece or parcel of land, situate, lying and being in the county of and state aforesaid, bounded as followeth:

and all houses, buildings, orchards, ways, waters,

water-courses, profits, commodities, hereditaments and appurtenances whatsoever, to the said premises hereby granted, or any part thereof belonging, or in any wise appertaining; and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and also all the estate, right, title, interest, use, trust, property, claim and demand whatsoever, of him the said of, in and to the said premises; and all deeds, evidences and writings, touching or in any wise concerning the same: To have and to hold the lands hereby conveyed, and all and singular other the premises hereby bargained and sold, and every part and parcel thereof, with their and every of their appurtenances, unto the said , his heirs and assigns, for ever, to the only proper use and behoof of him the said , and of his heirs and assigns, for ever. And the said for his heirs, executors and administrators, doth covenant, promise and grant, to and with the said , his heirs and assigns, by these presents, that the said , now at the time of sealing and delivering these presents, is seised of a good, sure, perfect and indefeasible estate of inheritance, in fee-simple, of and in the premises hereby bargained and sold, and that he has good power, and lawful and absolute authority, to grant and convey the same to the said , in manner and form aforesaid; and that the said premises now are, and so for ever hereafter shall remain, and be free and clear of and from all former gifts, grants, bargains, sales, dower, right, and title of dower, judgments, executions, titles, troubles, charges and incumbrances whatsoever, made, done, committed or suffered, by the said , or any other person or persons whatsoever: and that the said and his heirs, all and singular the premises hereby bargained and sold, with the appurtenances, unto the said , his heirs and assigns, against him the said and his heirs, and all and every person and persons whatsoever, shall warrant and for ever defend, by these presents. In witness whereof, the said hath hereunto set his hand and seal, the day and year first above written.

Form of a Deed of Gift of Lands & Tenements.

This Indenture made the day, &c. between A B, of , of the one part, and C D, of , son of the said A B, of the other part, Witnesseth, that the said A B, as well for and in consideration of the natural love and affection which he hath and beareth unto the said C D, his son, as also for the better maintenance and preferment of the said C D, hath given, granted, aliened, enfeoffed, and confirmed, and by these presents doth give, grant, alien, enfeoff, and confirm, unto the said C D, all that messuage or tenement, &c. with all and singular its appurtenances, and all houses, out-houses, lands, &c. and the reversion and reversions, remainder and remainders, rents and services, of the said premises; and all the estate, right, title, interest, property, claim and demand whatsoever, of him the said A B, of, in and to the said messuage or tenement, lands and premises, and of, in and to every part and parcel thereof, with the appurtenances; and all deeds, evidences and writings, concerning the said premises only, now in the hands or custody of the said A B, or which he may get or come by without suit in law: To have and to hold the said messuage or tenement, lands and premises, hereby given and granted, or mentioned or intended to be given and granted, unto the said C D, his heirs and assigns, to the only proper use and behoof of him the said C D, his heirs and assigns for ever. And the said A B, for himself, his heirs, executors and administrators, doth covenant and grant, to and with the said C D, his heirs and assigns, by these

presents, that he the said C D, his heirs and assigns, shall and lawfully may, from henceforth for ever hereafter, peaceably and quietly have, hold, occupy, possess and enjoy, the said messuage, tenement, lands, hereditaments and premises, hereby given and granted, or mentioned, or intended so to be, with their appurtenances, free, clear and discharged of and from all former and other gifts, grants, bargains and sales, feoffments, jointures, dowers, estates, entails, rents, rent charges, arrearages of rents, and of and from all other titles, troubles, charges and incumbrances whatsoever, had, made, committed, done or suffered, or to be had, made, committed, done, or suffered, by him the said A B, his heirs, executors or administrators, or any other person or persons, lawfully claiming, or to claim by, from or under him, them, or any or either of them. In witness, &c.

Form of a Deed of Gift of Goods & Chattels.

To all people unto whom these presents shall come. I, A B, of send greeting. Know ye, that I the said A B, for and in consideration of the natural love and affection which I have and bear unto my beloved brother C D of , and for divers other good causes and considerations me hereunto moving, have given and granted, and by these presents do give and grant, unto the said C D, all and singular my goods and chattels following: [here mention the goods.] To have, hold and enjoy, all and singular the said goods, chattels and personal estate aforesaid, unto the said C D, his executors, administrators and assigns, to the only proper use and behoof of him the said C D, his executors, administrators and assigns for ever. And I the said A B, all and singular the aforesaid goods, chattels and premises, to the said C D, his executors, administrators and assigns, against all persons whatsoever, shall and will warrant, and for ever defend, by these presents. In witness, &c.

Form of a Deed for Land sold for Taxes.

State of North-Carolina, Wake County.

Whereas the taxes on a certain tract of land lying on Creek, in the county aforesaid, remain due and unpaid for the year , and in consequence thereof the same was liable to be sold; and has been duly advertised according to law, and put up at auction, to be sold in part to the person offering to pay the public, county and poor taxes thereon, with all charges for advertising the same, for the smallest part thereof; and C D of the county aforesaid has offered to pay said taxes and charges amounting to , for one tenth part of said tract; and no person has offered to pay the sum aforesaid for a less part of said tract: And whereas the said C D has presented to me within three months after the expiration of one year from said purchase, a plot made by C F, surveyor of said county, with the courses and distances fairly set forth and certified under his hand, a copy whereof is hereto annexed; now,

Know all men by these presents, That I, A B, sheriff of the county aforesaid, for and in consideration of the premises, and of the said sum of to me in hand paid by the said C D, the receipt whereof I do hereby acknowledge, have bargained and sold, aliened, transferred, made over and enfeoffed; and do hereby bargain and sell, alien, enfeoff, transfer, and make over unto the said C D a certain parcel or tract of land lying on creek in the county aforesaid, beginning &c.; being the tenth part of the tract abovementioned.

To have and to hold the said bargained premises, with all the ways,

houses, fences and all appurtenances whatever, to him the said C D, his heirs and assigns forever, in fee simple absolute.

In witness whereof, I have hereto affixed my hand and seal, the day of

Form of the Deed when the Land is conveyed to the Governor.

State of North-Carolina, Wake County.

Whereas the taxes on a certain tract of land lying on creek, in the county aforesaid, remain due and unpaid for the year , and in consequence thereof the same was liable to be sold; and has been duly advertised, according to law, and put up at auction, to be sold in part to the person offering to pay the public, county and poor taxes thereon, with all charges for advertising the same, for the smallest part thereof; and no person offered to pay the said tax for less than the whole of the said tract; now

Know all men by these presents, That I, A B sheriff of the county aforesaid, in consideration of the premises, and in compliance with the directions of a certain act of Assembly in such case made and provided, have transferred, aliened, assigned, set over, and enfeoffed; and I do hereby transfer, alien, assign, set over and enfeoff to his Excellency Y Z, Esquire, Captain General, Governor and Commander in Chief of the State aforesaid, the piece or tract of land aforesaid, lying and being on creek, in the county aforesaid, &c.

To have and to hold the aforesaid tract or piece of land, together with all its rights, ways, houses, fences, improvements, and all and every thing thereto belonging or appertaining; to him the said Captain General, Governor and Commander in Chief, and his successors in office, forever, to the use of the State.

In witness whereof, I have hereto set my hand and seal, the day of

Form of a Deed when executed by the Sheriff's successor.

State of North-Carolina, Wake County.

Whereas the taxes on a certain tract of land lying on creek, in the county aforesaid, remaining due and unpaid for the year and in consequence thereof the same being liable to be sold, and being duly advertised according to law, and put up at auction to be sold in part to the person offering to pay the public, county and poor taxes thereon, with all charges for advertising the same, for the smallest part thereof, by U X, late sheriff of the county aforesaid, C D, of the county aforesaid, offered to pay the said taxes and charges, amounting to , for one tenth part of said tract, and no person offered to pay the sum aforesaid for a less part of said tract, and so much of said tract was accordingly adjudged to said C D; and the said U X, being now dead, without having executed a conveyance, the said C D has obtained and produced to me an order from the court of pleas and quarter sessions of the county aforesaid, to make and execute a title for the same; now,

Know all men by these presents, That I A B, Sheriff of the county aforesaid, for and in consideration of the premises, and of the said sum

of , paid by the said C D, have bargained and sold, aliened, transferred, made over and enfeoffed; and do hereby bargain and sell, alien, transfer and make over, unto the said C D, a certain parcel or tract of land, lying on Creek, in the county aforesaid, beginning, &c. being the tenth part of the tract first above-mentioned. To have and to hold, the said bargained premises, with all the ways, houses, fences and all appurtenances whatever, to him the said C D, his heirs and assigns, for ever, in fee-simple absolute. In witness whereof, I have hereunto set my hand and seal, the day of

DEPOSITIONS.

Subpœna to be issued by the Commissioners.

State of North Carolina, Wake County.

To D E, E F, Greeting.

We command you and every of you, that all and every business and excuse ceasing, you and every of you be in your proper persons before Commissioners appointed by the superior court of the district of to take your depositions, and the deposition of each of you, in a certain matter of controversy in the said court depending, between plaintiff, and defendant, on the day of next, at then and there to testify before us, the truth of your knowledge in the said controversy. And this do you, nor any of you, by no means omit. Witness the said the day of in the year of our Lord,

B C.....
C D..... } Commisssoners.

Commitment for refusing to be Sworn.

B C, and C D, commissioners appointed by the superior court for the county of , to take the depositions of D E & E F, in a certain matter of controversy in the said court depending, between plaintiff, and defendant.

To the Keeper of the common Jail of the County of

Whereas the said E F, being in our presence, [or in my presence] and being by us [or me] required to be sworn touching his knowledge concerning the matters in controversy, in the suit depending in the said court between the parties aforesaid, pursuant to a power to us [or me] given for that purpose, by a commission issued from the said court, and bearing date the day of , in the year of our Lord , refuses to be sworn as aforesaid: Therefore we [or I] command you to receive into your jail the said E F, there to remain until he shall be willing to give the said testimony, and shall conform himself to the directions of the law in such cases provided.

Given under our [or my] hands and seals, at , the day of in the year of our Lord

B. C.....(seal)
C. D.....(seal)

ELECTIONS.

Form of a Warrant against the Breaker-up of an Election.

State of North-Carolina, Wake County.

To A B, Constable, or any other lawful officer to execute.

Whereas B C hath complained on oath before me, C D, one of the Justices of the Peace for the county aforesaid, that D F, planter, together with other persons unknown, on the day of last, at , in the county aforesaid, by force and violence did break up an election, then and there held for the purpose of electing members of Assembly, to represent the county in the General Assembly of this State, by assaulting the officers of the said election, to wit, the sheriff, and inspectors of the poll, and by depriving the said officers of the ballot-box: These are therefore to command you to take the body of the said D F and bring him before me, or some other Justice of the Peace for the county aforesaid, to answer the said complaint, and to be dealt with in the premises as the law directs. Given under my hand and seal, &c.

For the form of the Recognizance, see *Recognizance.*

ESCAPE.

(*Warrant for.*)

State of North-Carolina, Wake County.

A B, Esq. one of the Justices of the Peace for the said County, to all Sheriffs, Bailiffs, and Constables within the State.

Whereas hath made oath before me, that on the day of , B C was in custody, in the common jail of this county, charged in execution at the suit of , for the sum of , which execution issued from the court of pleas and quarter sessions for the county of , and that on the said day the said escaped from the said jail and went at large, the said sum of being not paid or satisfied: You are therefore hereby commanded, that every of you in your respective counties, make diligent search for said , and him having found, that you seize and arrest, and forthwith convey to the common jail of your county, and him deliver to the sheriff thereof, to be by him therein detained in safe and secure custody until he shall thence be discharged by due course of law. And in case the said be arrested, then do you the said sheriff who shall receive him into your custody, make known to the court of pleas and quarter sessions of this county of Wake, at the sessions thereof to be held next after the said arrest, how this warrant shall have been executed. Herein fail not. Witness my hand and seal the day of in the year of our Lord

A C.....(seal.)

EXECUTION.

Form of an Execution against the Body.

State of North-Carolina, Wake County.

To the Sheriff of the said County, Greeting:

We command you that you take the body of (if to be found in your bailiwick,) and him safely keep, so that you have his body before the

justices of our court of pleas and quarter sessions, to be held for the county of , at the court-house in , on the day of next; then and there to satisfy the sum of which lately in our said court recovered against , as well for damages, by reason of the non-performance of certain promises by the said , before that time made as for costs and charges, by in suit, in that behalf expended, whereof the said convicted and liable, as to us appears of record, besides your fees for this service. Herein fail not, and have you there this writ. Witness Clerk of our said court, at the day of in the year of our Lord

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EXTORTION.

(*Warrant for.*)

State of North-Caroliua, Wake County.

To the Sheriff of the said County, and to all other lawful Officers.

Whereas A B, hath complained on oath to me C D, one of the Justices of the Peace of and for the said county, that D E, of the said county, planter, being the Clerk of the court of pleas and quarter sessions for the said county, on the day of , in the year of our Lord , at in said county, by pretext and colour of his said office, did unjustly and by extortion, take and extort shillings of one I E, in the said county, planter, for his services upon a certain indictment tried in the said court, wherein the said I E was indicted of an assault and battery committed on the person of one W W, when in truth not so much as the said sum of shillings, but only the sum of shillings, and no more, was due to the said D E, in that behalf. These are therefore to command you to take the body of the said D E, and bring him before me, or some other justice of the peace of the said county, to be examined touching the premises, and to be otherwise dealt with as the law directs.

Given under my hand and seal at in the county aforesaid, the day of in the year of our Lord C. D.....(seal.)

For the Form of the Recognizance, see *Recognizance*.

FELONY.

(*Warrant for.*)

State of North-Carolina, Wake County.

To A B, Constable, or to any lawful officer of the said County.

Whereas B C, of , in the county of , planter, hath this day made complaint upon oath before me, one of the Justices of the Peace for the county aforesaid, that this present day divers goods of him the said B D, to wit: have feloniously been stolen, taken and carried away from the house of him the said B C, at aforesaid, in the county aforesaid, and that he hath just cause to suspect, and doth suspect that C D, late of planter, feloniously did steal, take and carry away the same. These are therefore to command you to take the body of the said C D, and bring him before me, or some other Justice of the Peace of the county aforesaid, to answer the complaint in the premises as the law directs. Herein fail not.

Given under my hand and seal the day of , in the year of our Lord

FIERI FACIAS.

(*Form of.*)

State of North-Carolina, Wake County.

To the Sheriff of County, Greeting:

We command you, that of the goods and chattels, lands and tenements of (in your bailiwick) you cause to be made , which lately in our county court of pleas and quarter sessions, at , recovered against , as well for damages, by reason of the non-performance of certain promises by the said before that time made, as for costs and charges in suit, in that behalf expended, whereof the said is convicted and liable, as to us appears of record; and have the said monies before the said court, at aforesaid, on the day of next, to render to the said his damages, costs and charges aforesaid. And have you then and there this writ. Witness , Clerk of said court, at the day of in the year of our Lord

Forcible Entry and Detainer, see Ante 128.

GUARDIANS.

Form of a Guardian Bond.

State of North-Carolina.

Know all men by these presents, that , all of county, in the State aforesaid, are held and firmly bound unto , Justices of the court of pleas and quarter-sessions for the county of in the sum of pounds, current money, to be paid to the said Justices, or the survivor or survivors of them, their executors or administrators, in trust, for the benefit of the child hereafter named, committed to the tuition of the said To the which payment well and truly to be made, we bind ourselves, and each of us, each and every of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the day of , in the year of our Lord

The condition of the above obligation is such, that whereas the above bounden , is constituted and appointed Guardian to , a minor orphan; now if the said shall faithfully execute his said Guardianship, by securing and improving all the estate of the said that shall come into his possession, for the benefit of the said , until he shall arrive at full age, or be sooner thereto required, and then render a plain and true account of his said Guardianship, on oath, before the justices of our said court, and deliver up, pay to, or possess the said of all such estate or estates, as he ought to be possessed of, or to such other persons as shall be lawfully empowered or authorised to receive the same, and the profits arising therefrom, then this obligation to be void, otherwise to be and remain in full force and virtue.

HOMICIDE.

Form of the Warrant.

State of North-Carolina, Wake County.

To A B, Constable, or some other lawful officer to execute

Whereas B C, of in the county aforesaid, planter, hath this day made information and complaint upon oath, before me C D, Esquire,

one of the Justices of the Peace for the said county, that D E, late of , planter, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, on the day of , in the year of our Lord , at , in the county aforesaid, with force and arms, in and upon one E F, in the peace of God and of the said State then and there being, feloniously, wilfully and of his malice aforethought, an assault did make, and that the said D E, with a certain axe made of iron and steel, of the value of ten shillings, which he the said D E, in both his hands then and there had and held, him the said E F, in and upon the head of him the said E F, then and there feloniously, wilfully, and of his malice aforethought, did strike, thrust and penetrate, giving unto the said E F then and there, with the axe as aforesaid, in and upon the head of him the said E F, one mortal wound, of the breadth of one inch and of the depth of three inches, of which said mortal wound he the said E F, at aforesaid, in the county aforesaid, from the day of in the year aforesaid, until the day of in the same year, did languish, and languishing did live, on which said day of in the year aforesaid, the said E F at in the county aforesaid, of the said mortal wound did die: These are therefore to command you to take the body of the said D E, and to bring him before me, or some other Justice of the Peace for the county aforesaid, to answer the complaint in the premises, and to be further dealt with as the law directs. Herein fail not.

Given under my hand and seal the day of in the year of our Lord

C. D.....(seal.)

HUNTING BY FIRE-LIGHT.

Form of a Warrant to apprehend one for Hunting by Fire-Light.

State of North-Carolina, Wake County.

To A B, Constable, or any other lawful officer.

Whereas C. D, of , hath this day appeared before me, E F, one of the Justices of the Peace for the county aforesaid, and made oath that G H of this county, planter, did, in the night of the day of in the county aforesaid, (or he has good reason to believe and doth believe, that, &c. as the case may be,) hunt with a gun by fire-light, contrary to the act of Assembly in that case made and provided. These are therefore in the name of the State, to require you to apprehend the said G H, and bring him before me, or some other Justice of the Peace for the county aforesaid, to be dealt with as the law directs.

Given under my hand and seal, the day of

Indentures, See *Orphans*. E. F.....(seal.)

LARCENY.

Form of a Warrant.

State of North-Carolina, Wake County.

To E F, one of the Constables of and in said County.

Whereas B C, of , in the county aforesaid, planter, hath this day made information and complaint upon oath, before me C D, Esquire,

one of the Justices of the Peace for the said county, that this present day divers goods of him the said B C, to wit, have feloniously been stolen, taken and carried away from the house of him the said B C, at in the county aforesaid, and that he hath just cause to suspect, and doth suspect, that I K, late of , blacksmith, feloniously did steal, take and carry away the same: These are therefore to command you forthwith to apprehend him the said I K, and to bring him before me, or some other Justice of the Peace for the county aforesaid, to answer unto the said information and complaint, and to be further dealt with according to law. Herein fail not.

Given under my hand and seal the day of in the year of our Lord C. D.....(seal.)

LEASE.

Lease of House and Lands for a term of years.

This Indenture, made the day, &c. between A B, of , of the one part, and C D, of , of the other part, Witnesseth, that for and in consideration of the rent and covenants hereinafter reserved and contained, on the part and behalf of the said C D, his executors and administrators, to be paid, kept and performed, he the said A B hath demised, granted, and to farm letten, and by these presents doth demise, grant, and to farm let, unto the said C D, all the messuage, or tenement, situate, &c. with all and singular the profits, commodities and appurtenances, to the said messuage or tenement belonging or appertaining: To have and to hold the said messuage or tenement, and all and singular the premises, with their, and every of their appurtenances herein before mentioned, or intended to be hereby demised unto the said C D, his executors, administrators and assigns, from , for and during, and unto the full end and term of years, from thence next ensuing, and fully to be completed and ended: Yielding and paying therefor yearly, and every year, during the said term, unto the said A B, his executors, administrators and assigns, the rent or sum of pounds, on , by even and equal portions. And if it shall happen the said yearly rent of pounds, or any part thereof, shall be behind and unpaid by the space of days next after any of the said , on which the same ought to be paid as aforesaid, (being lawfully demanded,) that then, and at all times thereafter, it shall and may be lawful to and for the said A B, his executors, administrators and assigns, into the said demised messuage or tenement and premises, or into any part thereof, in the name of the whole to re-enter, and the same to have again, repossess and enjoy, as in his and their former estate, and the said C D, his executors, administrators and assigns, thereout, and from thence to expel and put out; any thing herein contained to the contrary thereof, in any wise, notwithstanding. And the said C D for himself, his executors, administrators and assigns, doth covenant and grant to and with the said A B, his executors, administrators and assigns, by these presents, that he the said C D, his executors, administrators or assigns, shall and will, during the said term hereby demised, well and truly pay, or cause to be paid unto the said A B, his executors, administrators or assigns, the said yearly rent or sum of pounds, on the days and times, and in the manner and form abovementioned, for the payment of the same, according to the reservation thereof as aforesaid, and the true intent and meaning of these presents. And also, that the said C D, his executors, administrators and assigns, or some or one of them, shall and will, at his or their own proper costs

and charges, well and sufficiently repair, uphold, support, maintain, and keep the said messuage, or tenement and premises, with all, and all manner of needful and necessary reparations and amendments whatsoever, when and as often as need or occasion shall be, or require, during the term, (the casualty of fire, or tempest, which may destroy the said messuage or tenement and premises, or any part thereof, only excepted.) And the said messuage or tenement and premises, being so well and sufficiently repaired, upheld, supported, maintained and kept, at the end of the said term, or other sooner determination of this present demise, unto the said A B, his executors, administrators and assigns, shall and will peaceably and quietly leave and yield up, (except as is before excepted.) And the said A B, for himself, his executors, administrators and assigns, doth covenant and grant to and with the said C D, his executors, administrators and assigns, that the said C D, his executors, administrators and assigns, paying the said yearly rent of pounds, above reserved in manner aforesaid, and performing all and every the covenants and agreements herein before contained, which on his or their parts and behalfs are or ought to be paid, done and performed, shall and may peaceably and quietly have, hold, use, occupy, possess and enjoy, the said messuage or tenement, and premises, hereby demised, for and during the term hereby granted, without any lawful let, suit, trouble, or interruption, of or by the said A B, his executors, administrators or assigns, or any of them, or by any other person or persons, lawfully claiming or to claim, by, from or under him, them, or any of them, or by or through his, their, or any of their acts, means, or procurement. In witness, &c.

LETTER OF LICENCE.

Letter of Licence from Creditors to a Debtor.

To all people to whom these presents shall come. We who have hereunto subscribed our names and affixed our seals, creditors of A B, of send greeting. Whereas the said A B, on the day of the date hereof, is indebted to us the several creditors hereunder named, in divers sums of money, which at present he is not able to pay or satisfy, without respite and time to be given him for the payment thereof: Know ye, therefore, that we the said several creditors, and each and every of us, have given and granted, and by virtue of these our present Letters, do give and grant unto the said A B, full and free liberty, licence, power and authority, to go about, attend follow and negotiate any affairs, business, matters and things whatsoever, to or at any place or places whatsoever, without any let, suit, trouble, arrest, attachment or other impediment to be offered or done unto him the said A B, his wares, goods, monies, or other merchandizes whatsoever, or any of them, or any part of them, by us or by any of us, or by the heirs, executors or administrators, partners or assigns of us or any of us, or by our or any of our means and procurement, to be sought, attempted or procured to be done, for and during next, and immediately ensuing the day of the date hereof. And further, we the said creditors hereunto subscribed, do, and each of us doth covenant and grant, for ourselves, our heirs, executors, administrators and assigns, respectively, and not jointly one for another, nor for the heirs, executors, administrators or assigns of one another, to and with the said A B, that we, or each or any of us, our heirs, executors, administrators and assigns, or any of them, shall not, nor will, during the time aforesaid, sue, arrest, attach, or prosecute the said A B, for or upon account of our respective

debts, or any part thereof, or of any of them; and that if any hurt, trouble, wrong, damage or hindrance, be done unto the said A B, either in body, goods or chattels, or any of them, within the aforesaid term of next ensuing the date hereof, by us, or any of us the said creditors, or by any person or persons, or by or through the procurement, consent or knowledge of us, or any of us, contrary to the true intent and meaning of these presents, that then the said A B, by virtue hereof, shall be discharged and acquitted for ever, against such of us the said creditors, his and their heirs, executors, administrators or assigns, by whom and by whose will, means or procurement he shall be arrested, attached, imprisoned, grieved or damnified, of all manner of actions, suits, quarrels, dues, debts, charges, sum or sums of money, claims and demands whatsoever, from the beginning of the world to the day of the date hereof.

MORTGAGE.

Form of a Mortgage of Lands.

This Indenture, made the day of between A B, of , of the one part, and C D, of , of the other part, Witnesseth, that the said A B, for and in consideration of the sum of to him in hand paid by the said C D, the receipt whereof he doth hereby confess and acknowledge, he the said A B hath granted, bargained and sold, and by these presents doth grant bargain and sell, unto the said C D, all that messuage or tenement, and all those lands, &c. situate, lying and being in , also, the reversion and reversions, remainder and remainders, rents and services of the said premises, and of every part and parcel thereof, with the appurtenances: To have and to hold the said messuage or tenement, lands and premises above mentioned, and every part and parcel thereof, with the appurtenances, unto the said C D, his executors, administrators and assigns, for and during the term of years next and immediately ensuing and following, and fully to be completed and ended. Yielding and paying therefor yearly, during the said term, one pepper corn, in and upon if demanded: Provided always, and upon condition, that if the said A B, his heirs or assigns, do or shall well and truly pay, or cause to be paid unto the said C D, his executors, administrators or assigns, the full sum of in and upon the day of next coming, or which will be in the year without any deduction or abatement whatsoever, either ordinary or extraordinary, then and from thenceforth, these presents, and every thing herein contained, shall cease, determine and be void, any thing herein contained to the contrary nntwithstanding. And the said A B, for himself, his heirs, and assigns, doth covenant and grant to and with the said C D, his executors, administrators and assigns, that he the said A B, his heirs or assigns, shall and will well and truly pay, or cause to be paid, unto the said C D, his executors, administrators or assigns, the said full sum of in and upon the said without any deduction as aforesaid, according to the true intent and meaning of these presents. And also that he the said C D, his executors, administrators and assigns, shall and may at all times, after default shall be made in performance of the proviso or condition herein contained, peaceably and quietly enter into, have, hold, occupy, possess and enjoy all and singular the said messuage or tenement, lands and premises above mentioned, and every part and parcel thereof, with the appurtenances, for and during the residue and remainder of the said term of years,

hereby granted, which shall be then to come and unexpired, without the let, trouble, hindrance, molestation, interruption and denial of him the said A B, his heirs and assigns, and of all and every other person and persons whatsoever. And further, that he the said A B, and his heirs, and all and every other person and persons, and his and their heirs, any thing having or claiming in the said messuage or tenement, and premises above mentioned, or any part thereof, shall and will at any time or times, after default shall be made in performance of the proviso or condition herein contained, make, do and execute, or cause or procure to be done, made and executed, all and every such further and other lawful and reasonable grants, acts and assurances in the law whatsoever, for the further, better and more perfect granting and assuring of all and singular the said premises above mentioned, with the appurtenances unto the said C D. To hold to him, his executors, administrators and assigns, for and during all the rest and residue of said term of years above granted, which shall be then to come and unexpired, as by the said C D, his executors, administrators or assigns, or his or their Coun. sel learned in the law, shall be reasonably devised or advised and required. And lastly, it is covenanted, granted, concluded and agreed upon, by and between the said parties to these presents, and the true meaning hereof also is, and it is hereby so declared, that until default shall be made in performance of the proviso or condition herein contained, he the said A B, his heirs and assigns, shall and may hold and enjoy all and singular the said premises above mentioned, and receive and take the rents, issues and profits thereof, to his and their own proper use and benefit; any thing herein contained to the contrary thereof notwithstanding. In witness, &c.

Form of a Mortgage of Personals.

Know all men by these presents, that I, A B, of , for and in consideration of the sum of pounds, current money, to me in hand paid by C D, of , merchant, the receipt whereof I do hereby acknowledge, have bargained, sold and delivered, and by these presents do bargain, sell and deliver, unto the said C D, [here mention the chattels.] To have and to hold the said bargained premises unto the said C D, his executors, administrators and assigns, for ever. And I, the said A B, for myself, my executors and administrators, shall and will warrant and for ever defend, against all persons, by these presents, the said bargained premises unto the said C D, his executors, administrators and assigns. Provided nevertheless, that if I the said A B, my executors, administrators and assigns, or any of us, do and shall well and truly pay, or cause to be paid, unto the said C D, his executors, administrators or assigns, the sum of pounds, on the day of next ensuing the date hereof, with lawful interest for the same, for redemption of the said bargained premises, then this Bill of Sale to be void, or else to remain in full force. In witness whereof I have hereunto set my hand and seal, the day of

Oaths, see this title in the body of the Work.

Form of a Bond to pay Money.

State of North-Carolina.

Know all Men by these presents, That held and firmly bound unto in the full and just sum of to be paid unto the said

his executors, administrators or assigns: To the which payment well and truly to be made and done, bind heirs, executors, administrators, jointly and severally, firmly by these presents. Sealed with seal, and dated the day of .

The condition of the above obligation is such, that if the above bounden , his heirs, executors, or administrators, do and shall well and truly pay, or cause to be paid, unto the said heirs, executors, administrators or assigns, the full and just sum of , on or before the day of next ensuing the date hereof, with lawful interest for the same, then the above obligation to be void; otherwise to remain in full force and virtue.

The Common Condition of an Arbitration Bond.

The Condition, &c. That if the above bounden A B, his executors and administrators, and every of them, do and shall, for his and their part and behalf, in and by all things, well and truly stand to, obey, abide, observe, perform, fulfil, and keep the award, order, arbitrament, final end and determination of [or you may say, any two of them] arbitrators indifferently chosen, elected and named, as well by and on the part and behalf of the said A, as by and on the part and behalf of the above named C, to arbitrate, award, order, judge, determine, and agree, for, upon, touching and concerning all mannner of action and actions, cause and causes of actions, suits, bills, bonds, specialties, covenants, contracts, promises, accounts, reckonings, sums of money, judgments, executions, extents, quarrels, controversies, trespasses, damages and demands whatsoever, both at law and in equity, at any time heretofore, had, moved, brought, commenced, sued, prosecuted, done, suffered, or committed, by or between the said parties, so as the award of the said arbitrators (or any two of them) be made and set down in writing, indented under their, or any two of their hands and seals, ready to be delivered to the said parties in difference, on or before, &c. then, &c.

To be added (before the words *then*, &c.) if there is to be an Umpire.

And if the said arbitrators shall not make their award of and concerning the premises within the time limited as aforesaid, then if the said A, his heirs, executors, and administrators, and every of them, for his and their part and behalf, do and shall well and truly stand to, observe, perform, fulfil and keep, the award, determination and umpirage of G, (being a person indifferenily named and chosen between the said parties for umpire) in and concerning the premises, so as the said umpire, do make and set down his award and umpirage in writing, indented under his hand and seal, ready to be delivered to the said parties in difference, on or before the——then, &c.

To be added (after the words *then*, &c.) when to be made a rule of court.

And it is hereby agreed by and between the said parties, that these presents, and the submission hereby made of the said matters in controversy, shall be made a rule of the court of , to the end the said parties in difference shall be finally concluded by the said arbitration by these presents intended, pursuant to the statute in that case provided.

But if the Condition be special, say,

Whereas differences have arisen, and are depending between the above bound A B, and the above named C D, concerning [here particu-

larly mention what the difference is about] (which account, and all differences and demands concerning the same) the said parties have agreed to refer to the award, judgment and determination of , arbitrators, indifferently chosen, by and between the said parties, to award, arbitrate, award and determine, concerning the same, [and if to be an umpire, say] and if they do not make the award within the time hereunder limited, then to the umpirage of such person as the said arbitrators shall indifferently choose for umpire, as hereunder is mentioned. Now therefore the condition of this obligation is such, that if the said A B, his executors and administrators, on his or their part and behalf, shall and do in and by all things, well and truly stand to, observe, perform, fulfil and keep, the award, arbitration, judgment, final end and determination, which arbitrators as aforesaid, shall make and give upon writing, &c. [as before to the time fixed upon, and then say] in and concerning the before mentioned account and matters in difference, and all or any actions, suits, and causes of suits, debts, dues, damages, claims and demands whatever, concerning the same. And if the said arbitrators shall not, &c. [as before] then, &c.

The Form of an Award made by two Arbitrators.

To all to whom these presents shall come, we E F, of &c. and G H, of &c. send greeting. Whereas there are several accounts depending, and divers controversies and disputes have lately arisen between A B of &c. of the one part, and C D, of &c. of the other part, touching and concerning, &c. And whereas for the putting an end to the said difference and disputes, they the said A B and C D, by their several bonds and obligations, bearing date, &c. are reciprocally bound each to the other, in the penal sum of to stand to, abide, perform and keep the award, order and final determination of us the said E F and G H, arbitrators indifferently chosen between the said parties, to arbitrate, &c. [as in the bond] so as the said award be made in writing under our hands and seals, and ready to be delivered to the parties in difference, on or before next, as by the said in part recited bonds or obligations, with the conditions there under written, may appear: Now know ye, That we the said arbitrators, whose names are hereunto subscribed and seals affixed, taking upon us the burden of the said award, and having fully examined and fully considered the proofs and allegations of both the said parties, do, for the settling amity and friendship between them, make and publish this our award, by and between the said parties, in manner following: that is to say, First, we do award and order, that all actions, suits, quarrels and controversies whatsoever, had, moved, arisen or depending between the said parties in law or equity, for any manner or cause whatsoever touching the said premises, to the day of the date hereof, shall cease and be no farther prosecuted: And that each of the said parties shall bear and pay his own costs and charges, in any wise relating to or concerning the said premises. And we do also award and order, that the said A B shall pay, or cause to be paid, to the said C D, the sum of , &c. within the space of, &c. And further, we do hereby award and order, that the said C D shall, on or before, &c. pay or cause to be paid to the said A B the sum of, &c. or give sufficient security for the same to the said A B. And lastly, we do award and order, that the said A B and C D, on the receipt of the several sums of, &c. shall, in due form of law, execute each to the other of them, or the other's use, general releases, sufficient in the law for the releasing by each to the other of

them, his heirs executors and administrators, of all actions, suits, arrests, quarrels, controversies and demands whatsoever, touching or concerning the premises aforesaid, or any matter or thing thereunto relating, from the beginning of the world to the day of the date of, &c. [Here mention the date of the arbitration bonds] last past. In witness whereof, we hereunto set our hands and seals, the, &c. in the year, &c,

An Umpirage for want of a determination by Arbitrators chosen.

To all, &c. I, J K, of, &c. send greeting. Whereas there are several accounts depending, &c. [Here go on as in the former awards, until you come to] to stand to, &c. the award and final determination of E F, of, &c. and G H of, &c. arbitrators indifferently chosen between the said parties to arbitrate, &c. [as in the conditions of the bonds] so as the said award was made in writing, under the hands and seals of the said arbitrators, and ready to be delivered to the parties in difference, on or before, &c. last past. And if the said arbitrators did not draw up the said award in writing, and deliver the same as aforesaid, on or before the said, &c. then the said parties were to stand to, abide, observe, perform and keep the award, umpirage, final end and judgment of me the said I K, umpire indifferently chosen between the said parties, for the composing and ending the differences aforesaid; so as my said award, umpirage and determination may be made in writing, under my hand and seal, and ready to be delivered to the said parties, on or before, &c. as by the said part recited bonds or obligations, with the conditions there under written, may appear: And whereas the said E F and G H did make up the said award between the said parties, within the time limited by the said part recited bonds or obligations as aforesaid; whereby and on which account, the compassing, ending and determining the said differences and matters in dispute, now depends wholly upon me: Now know ye, That I, the said I K having taken upon me the business and charge of the said award and umpirage, and being willing to set the said parties at peace and concord, by making a final end of the controversies between them; and having deliberately, and at large, heard, examined and duly considered the grievances, allegations, titles, vouchers and evidences of both the said parties, in relation to the said premises in dispute, do make, publish, declare and deliver this my award or umpirage, in manner following; that is to say, First, I arbitrate, award, judge, order and determine, that, &c. [Here insert the several particulars of the award] In witness, &c.

An Award or Umpirage by a single Person elected to arbitrate.

To all, &c. I, E F, of, &c. send greeting. Whereas, &c. [Here go on as in the award made by two arbitrators until you come to] to stand to, &c. the award, order and final determination of me the said E F, indifferently elected and chosen between the said parties, to arbitrate, &c. [as in the conditions of the bonds] so as my said award or umpirage be made in writing, under my hand and seal, and ready to be delivered to the said parties, on or before, &c. as in and by the said in part recited bonds or obligations, and the conditions thereof, may appear: Now know ye, that I the said E F [Here go on as in the last precedent]. In witness, &c.

ORPHANS.

Form of Indenture of Apprenticeship.

State of North-Carolina.

This Indenture, made the day of in the year of our Lord between Chairman of the court of pleas and quarter sessions of the county of and state aforesaid, on behalf of the Justices of the said county, and their successors, of the one part, and of the other part, Witnesseth, that the said in pursuance to an order of the said county court, made the day of and according to the directions of the act of Assembly in that case made and provided, doth put, place and bind unto the said an orphan, now of the age of years, with the said to live after the manner of an apprentice and servant, until the said apprentice shall attain to the age of twenty-one years: During all which time the said apprentice his master shall faithfully serve, his lawful commands every where gladly obey: he shall not at any time absent himself from his said master's service without leave, but in all things as a good and faithful servant shall behave towards his said master. And the said doth covenant, promise and agree to and with the said that he will teach and instruct, or cause to be taught and instructed, the said to learn and that he will constantly find and provide for the said apprentice, during the term aforesaid, sufficient diet, washing, lodging and apparel, fitting for an apprentice; and also all other things necessary, both in sickness and in health. In witness whereof, the parties to these presents have interchangeably set their hands and seals, the day and year first above written.

POOR.

Warrant for removing poor Persons.

State of North Carolina, Wake County.

To A. B. one of the Constables of the said County.

Forasmuch as the Wardens of the Poor for the county of Wake, have complained before me, C D, one of the Justices of the Peace in and for the said county, that A B, a poor person, hath come into the said county of Wake, to inhabit and reside, from and out of the county of in which the said A B hath gained a legal settlement, by being actually resident therein one whole year, and is likely to become chargeable to the said county of Wake; and the said Wardens for the county of Wake, have made before me due proof of the premises: I do therefore command you the said Constable, to convey the said A B, from and out of the said county of Wake, and him to deliver to the Wardens of the Poor for the said county of or to some or one of them, together with a true copy of this precept, at the same time shewing to them the original. Given under my hand and seal, the day of in the year of our Lord C. D..... (seal)

POWER OF ATTORNEY,

A General Letter of Attorney.

Know all men by these presents, That I, A B, of , for divers good causes and considerations me hereunto moving, have made, ordain-

ed, authorised, nominated and appointed, and by these presents do make ordain, authorise, nominate and appoint C D, of , my true and lawful Attorney, for me, and in my name, and for my own proper use and benefit, to ask, demand, sue for, recover and receive of and from E F, of , all such sum or sums of money, debts and demands whatsoever, which are now due and owing unto me the said A B, by and from the said E F, and to have, use and take all lawful ways and means, in my name or otherwise, for the recovery thereof, by attachment, arrest, distress or otherwise, and to compound and agree for the same; and acquittances or other sufficient discharges for the same, for me, and in my name, to make, seal, and deliver; and to do all other lawful acts and things whatsoever, concerning the premises, as fully, and in every respect, as I myself might or could do, were I personally present at the doing thereof; and attornies one or more under him, for the purposes aforesaid, to make, and again at his pleasure to revoke; ratifying and confirming, and by these presents allowing whatsoever my said attorney, shall in my name lawfully do, or cause to be done, in and about the premises, by virtue of these presents. In witness whereof I have hereunto set my hand and seal, the day of, &c.

A Revocation of a Letter of Attorney.

Know all men by these presents, that whereas I, A B, of , in and by my Letter of Attorney, bearing date , did make, constitute and appoint C D, of , my Attorney, for recovery of all debts and sums of money whatsoever due to me the said A B, from E F, of , as by the said letter of attorney may appear: Now know ye, that I the said A B, for that the said C D hath abused the authority by me in him reposed, [or thus, for divers good causes and considerations me hereunto moving) have revoked, countermanded, annulled and made void, and by these presents do revoke, countermand, annul and make void, the said letter of attorney, and all power and authority thereby given or intended to be given to the said C D. In witness, &c.

A Warrant of Attorney to appear and Plead to an Action.

To A B, Esq. one of the Attornies of the court of . These are to desire and authorise you to appear for me, C D, of , in the said court, in an action , and for your so doing this shall be your sufficient warrant. In witness, &c.

PROMISSORY NOTE.

Form of A Promissory Note, or Common Note for Money.

I promise to pay C D, or order, the sum of , three months after date, [or on demand if thought necessary] for value received. Witness my hand this day of in the year of our Lord

RAPE.

Form of the Warrant.

State of North-Carolina, Wake County.

To A B, Constable, or some other lawful officer to execute.

For as much as B C, spineter, of the said county, hath complained on oath before me, C D, one of the Justices of the Peace of the said county,

that A O labourer, late of , on the , day of in the year of our Lord , at , in the county aforesaid, on and upon the said B C, violently and feloniously did make an assault, and her the said B C, against the will of her the said B C, then and there feloniously ravished and carnally knew: These are therefore to command you to make diligent search for the said A O, and him being found, that you bring him before me or some other Justice of the Peace for the said county, to be examined touching the premises, and to be otherwise dealt with according to law.

Given under my hand and seal the day of in the year of our Lord C D.....(seal)

For the form of the Examination and Mittimus, see EXAMINATION and COMMITMENT.

For the form of Recognizance, see RECOGNIZANCE.

RECOGNIZANCE.

Form of a Recognizance with Sureties.

State of North-Carolina, Wake County.

Be it remembered, that on the day of , in the year of our Lord , A O, of in the county aforesaid, planter, and A S, of , in the county aforesaid, taylor, and B S, of the county aforesaid, labourer, personally came before me J P, Esquire, one of the Justices of the Peace for the county aforesaid, and acknowledged themselves to owe to this State, that is to say, the said A O, the sum of twenty pounds, and the said A S, and B S, each the sum of ten pounds separately, of good and lawful money of the said State, to be made and levied of their goods and chattels, lands and tenements respectively, to the use of the said State, if the said A O, shall make default in the condition hereon endorsed [or hereunder written.]

Acknowledged before me, J. P.

Recognizance without Sureties.

State of North-Carolina, Wake County.

Be it remembered, that on the day of , in the year of our Lord , A O, of , in the county aforesaid, planter, personally came before me, J P, one of the Justices of the Peace for the said county, and acknowledged himself to owe to this State ten pounds, of good & lawful money of the said State, to be made and levied of his goods and chattels, lands and tenements, to the use of the said State, if he the said A O shall fail in the condition under written [or endorsed.]

Acknowledged before me, J.P,

RELEASE.

Form of a General Release.

Know all men by these presents, I, A B, have remised, released, and forever quit-claimed, for me, my heirs, executors and administrators, and

by these presents do remise, release, and forever quit-claim unto C D, of , his heirs, executors and administrators, all and all manner of action and actions, cause and causes of actions, suits, bills, bonds, writings, obligations, debts, dues, duties, reckonings, accounts, sum & sums of money, judgments, executions, extents, quarrels, controversies, trespasses, damages and demands whatsoever, both at law and in equity, or otherwise however, which against him the said C D, I ever had, now have, or which I, my heirs, executors or administrators can, shall or may have, claim, challenge or demand, for or by reason or means of any act, matter, cause or thing, from the beginning of the world to the day of the date of these presents. In witness, &c.

Release of Errors.

Know all men by these presents, that I, AB, of, &c. have remised, released and forever quit-claimed, and by these presents do remise, release, & forever quit-claimed unto C D of, &c. all and all manner of error and errors, cause and causes of error, misprisions, misentries, defects, and wrongful pleading and proceedings whatsoever, made, committed, omitted or done, in, about, or concerning one judgment for the sum of, &c. together with costs of suit by the said C D obtained against me in the court of , held at last past; and also all writs of error or errors, whatsoever, concerning the same. In witness, &c.

Release of Right to Administration by a Widow.

To the Justices of the Court of Pleas and Quarter-Sessions for the County of Wake.

Whereas my late husband, W C, died intestate, whereby the right of the administration of the estate of the said deceased did devolve upon me R C, widow and relict of the said deceased: Now know, that for divers good causes and considerations, me the said R C specially moving, I have released, and hereby do release, all my right and title to the administration of the said estate. Witness my hand and seal, the day of

Acquittance to an Executor.

Know all Men by these presents, That I, A A, of, &c. son of B A, of &c. deceased, have remised, released. quit-claimed, and by these presents do remise, release, and forever quit claim, unto C C, of, &c. executor of the last will and testament of the said B A, all and all manner of actions, suits, and causes of actions and suits, accounts, reckonings and demands whatsoever; for or concerning the rents or profits of any lands, tenements or hereditaments, or any other estate of the said B A, either real or personal, or for or concerning any household stuff or other goods, sum or sums of money whatsoever, or any other thing or things to me bequeathed, in or by the said last will or testament of the said B A. And I do further also hereby remise, release and quit claim, unto the said C C, all and all manner of actions and suits, and causes of actions or suits, debts, dues and demands whatsoever, from the beginning of the world to the day of the date hereof. In witness whereof, I have set my hand and seal.

RIOT.

Record of a Riot on view.

State of North-Carolina, Wake County.

Be it remembered, that on the day of in the year of our Lord , we J P and K P, Esquires, two of the Justices assigned to keep the Peace in the said county, and A S, Esquire, Sheriff of the said county, at the complaint and request of A I, of in the county aforesaid, planter, in our proper persons, have come to the mansion house of him the said A I, in aforesaid, and then and there do find A O, of planter, B O, of planter, C O, of carpenter, and other malefactors and disturbers of the peace of the said state to us unknown, to the number of eleven persons, in a warlike manner arrayed, to-wit, with clubs, swords and guns, unlawfully, riotously and rontously assembled, and the same house besetting, many evils against him the said A I threatening, to the great disturbance of the peace of the said state, and terror of the people, and against the form of the statute in that case made and provided. And therefore, we the aforesaid J P, K P and A S, the aforesaid A O, B O and C O, do then and there cause to be arrested, and to the common jail of the county aforesaid to be conveyed, by our view and record of the unlawful assembly, riot and rout aforesaid convicted, there to remain every and each of them respectively, until they shall have severally and respectively paid to the state, the several sums of pounds each, which we do impose upon them and every of them separately for their said offence. In testimony whereof, to this our present record, we do put our hands and seals. Dated aforesaid, the day and year aforesaid.

J. P..... (seal)
K. P..... (seal)
A. S..... (seal)

Commitment of Rioters on view.

State of North Carolina, Wake County.

I P and K P, Esquires, two of the Justices assigned to keep the peace within the said county, and A S, Esquire, Sheriff of the said county.

To the Keeper of the Common Goal of the said County, Greeting.

Whereas upon complaint made unto us by A I, of , planter, we did this present day of , go to the house of the said A I, at aforesaid, and there did see A O, of , planter, B O, of , planter, C O of , planter, and other malefactors to us unknown, assembled together in an unlawful, routous and riotous manner, to the terror of the people, and against the peace of the State, and against the form of the statute in that case made and provided: We do therefore send you, by the bringers hereof, the bodies of the said A O, B O and C O, convicted of the said riot, rout and unlawful assembly, by our own view, testimony and record; commanding you in behalf of the said State, to receive them into the said gaol, and them and every of them respectively there safely to keep, until they and every of them shall respectively pay to the said State, the several and respective sum of pounds each, which we have set and imposed upon them, and every of them separately, for the said offence.

Given under our hands and seals at , in the said county, the day of in the year of our Lord

J P.....(seal)
K P.....(seal)
A S.....(seal)

Warrant to Summon a Jury.

J P, and K P, Esquires, two of the Justices of the Peace for the said county.

To the Sheriff of the said County, Greeting.

On behalf of the State we command you, that you come before us at , in the county aforesaid, on the day of next ensuing, twenty-four honest and lawful men of the county aforesaid, to inquire upon their oath, of certain riots, routs and unlawful assemblies at , in the county aforesaid, lately committed, as it is said; and that you return upon every person so by you to be impanneled, twenty shillings of issues at the aforesaid day, to be by them respectively forfeited if they shall not appear and be sworn to inquire of the premises at the said time and place. And this you shall in no wise omit, on pain of twenty pounds.

Given under our hands and seals at aforesaid, in the county aforesaid, the day of in the year of our Lord

The Inquisition or Presentment of the Jury.

State of North-Carolina, Wake County.

An Inquisition for the State indented and taken at in the county aforesaid, the day of in the year of our Lord , by the oath of honest and lawful men of the county aforesaid, before J P and K P, Esquires, Justices of the Peace in and for the said county, who say upon their oath aforesaid, that A O, of , planter, B O, of , planter, C O, of , carpenter, together with other malefactors and disturbers of the peace of the said State, to the jurors aforesaid as yet unknown, on the day of now last past, at aforesaid, in the county aforesaid, with force and arms, to wit, with clubs, swords and guns, unlawfully, routously and riotously did assemble, to disturb the peace of the said State; and so being then and there assembled and gathered together, the mansion house of A I, planter, at aforesaid, unlawfully, routously, and riotously did enter, and in and upon him the said A I, then and there unlawfully, routously and riotously did make an assault, and him the said A I then and there unlawfully, routously and riotously did beat, wound and ill treat, in disturbance of the peace of the State, and to the terror of the people, and against the form of the statute in such case made and provided.

We whose names are hereunto set, the above said jurors, do find this inquisition true.

A B,
C D, &c.

We the Justices abovesaid, do hereby impose the fines under written, on the above offenders.

A O, 20*l.*
B O, 20*l.*
C O, 20*l.*

ROADS.

Warrant for not Working on the Road.

State of North-Carolina, Wake County.

To A B, Constable, or some other lawful officer of the said County.

Whereas complaint hath been made to me, B C, one of the Justices

of the Peace for the said county, by C D, overseer of a part of the road leading from to that , one of the company, liable by law to work on such part of the road whereof he is overseer, hath made default in working on the said road, with taxables for days, although lawfully summoned by the said overseer for that purpose, whereby he hath forfeited the sum of , for his said default: These are therefore to require you to bring the said before me or some other justice of the Peace for the said county, to answer the said complaint, and to be dealt with in the premises as the law directs.

Given under my hand and seal the day of in the year of our Lord C D.....(seal)

Warrant for Turning a Road.

To A B, Constable, or some other lawful officer of the said County.

Whereas B C hath complained before me, C D, one of the Justices of the Peace in and for the said county, that D E hath turned a part of the public road leading from to in the said county, without any order of the county court founded upon the report of a jury for that purpose, out of its usual and established course, and hath continued such part of the said road so turned out of its old course, for the space of months; whereby he hath forfeited the sum of to any person suing for the same: These are therefore to command you to bring the said D E before me or some other Justice of the Peace for said county, on or before the day of next, being the third day (except Sundays) from the date hereof, to answer the said complaint, and to be dealt with in the premises as the law directs.

Given under my hand and seal the day of in the year of our Lord

Warrant for erecting Bars across a Public Road.

To A B, Constable, or to any other lawful officer to execute.

Whereas B C, hath complained before me, C D, one of the Justices of the Peace for the said county, that D E hath erected, or caused to be erected, across the public road leading from to , in the said county [a gate or bar, or other obstacle, as the case may be] whereby he hath forfeited the sum of five pounds to the use of the person suing for the same: These are therefore to command you to take the body of the said D E, and bring him before me or some other Justice of the Peace for the said county, within thirty days (Sundays excepted) from the date of this warrant, to answer the said complaint, and to be dealt with in the premises as the law directs.

Given under my hand and seal the day of in the year of our Lord

Judgment on a Warrant for not Working on a Road.

State of North-Carolina, Wake County.

Be it remembered, that on the day of in the year of our Lord , at the house of , in the said county, the within named parties appeared before me, A B, one of the Justices of the Peace for the county aforesaid, and all and singular the matters and evidences concerning the said complaint, being fully heard and considered and laid before me, and it appearing that the said hath made default with

taxables, for the space of days, as in the said warrant is complained against him: Therefore it is considered, that the said hath forfeited the sum of and the said do recover the same, and also for his costs, in all amounting to which said first mentioned sum shall be applied by the said in hiring other hands to work on the said road. A B...., (seal.)

See DEBT and DEBTOR, in the body of the book.

SALE.

Form of a Bill of Sale of Personals.

State of North-Carolina.

Know all Men by these presents, That I, B F, of for and in consideration of the sum of of lawful money of the said state, to me in hand paid by C D, of at or before the sealing and delivery of these presents, the receipt whereof I the said B F do hereby acknowledge, have granted, bargained and sold, and by these presents do grant, bargain and sell, unto the said C D, his executors, administrators and assigns, all the goods, household stuff, implements and furniture, particularly mentioned, expressed and contained in the schedule hereunto annexed [or thus, hereinafter particularly mentioned, that is to say, one bedstead, &c.] all and singular which said premises are now remaining, standing and being in a certain messuage or tenement, situated and now or late in the occupation of the said B F. To have and to hold all and singular the said goods, household stuff and furniture, and other the premises above bargained and sold, or mentioned, or intended so to be, to the said C D, his executors, administrators and assigns forever. And I the said B F, for myself, my heirs, executors and administrators, all and singular the said goods unto the said C D, his executors, administrators and assigns, against me the said B F, my executors and administrators, and against all and every other person and persons whomsoever, shall and will warrant and for ever defend by these presents. Of all and singular which said goods I the said B F have put the said C D in full possession, by delivering to him the said C D one silver spoon, at the sealing and delivery of these presents, in the name of the whole premises hereby bargained and sold, or mentioned, or intended so to be, unto him the said C D as aforesaid. In witness whereof, &c.

SCIRE FACIAS.

(Form of)

State of North-Carolina, Wake County.

To the Sheriff of the said County, *Greeting*:

Whereas lately in our court of pleas and quarter sessions, held for the county of recovered in the suit he there prosecuted against the said defendant, as also current money, then and there, in and by our said court (thereon) adjudged, besides other endorsed fees, for costs of suit, against whereof convicted, &c. and though judgment be thereof given, yet execution thereof to the said plaintiff still

remains to be made. And as of the county aforesaid, who in that suit were securities, and liable, in virtue of an act of the General Assembly of this state, &c. as special bail, to abide and perform therein the judgment of our said court, to surrender the principal into our prison, before the Justices of our court of pleas and quarter sessions, to be held for the county of at the court-house in on the day of next, on that occasion, in case he fail so to do, in discharge of the said bail; which hitherto in all things, on that occasion, both principal and bail aforesaid have failed to do, as to us the said plaintiff hath insinuated, as well as supplicated to us to provide, in that behalf, a fit remedy. So we, in that part, willing to do what is just, do therefore command you that by good and lawful men of your bailiwick, you make known to the said bail to appear before our court of pleas and quarter sessions, to be held for the county of at the court-house in on the day of next, to shew cause wherefore the said plaintiff, if expedient to execution against the said bail, as well for the aforesaid several sums of money, as for all other costs whatsoever by reason of the premises, ought not to have, according to the form and effect, as well of the judgment and recovery aforesaid, as of the said bail's undertaking; and further, to do and receive all whatsoever that then and there, in that part, by our said court, shall be considered of. And have you then and there the names of them by whom you make known as aforesaid, together with this writ. Witness Clerk of our said court, at the day of in the year of our Lord

SEARCH-WARRANT.

(Form of)

State of North-Carolina, Wake County.

To A B, Constable, or any other lawful officer of the said County;

Whereas it appears to me, B C, one of the Justices of the Peace of and for the said county, by the information on oath of C D, of in the said county, planter, that the following goods, to-wit, have within days last past, by some person or persons unknown, been feloniously stolen, taken and carried away out of the house of the said C D, at aforesaid, in the county aforesaid; and that the said C D, hath probable cause to suspect, and doth suspect, that the said goods, or part thereof, are concealed in the dwelling-house of in the said county, planter: These are therefore, in the name of the State, to authorise and require you, with proper and necessary assistants, to enter in the daytime, into the said dwelling-house of the said at in the county aforesaid, and there diligently to search for the said goods; and if the same, or any part thereof, shall be found upon such search, that you bring the goods so found, and also the body of the said before me, or some other Justice of the Peace of the said county, to be disposed of and dealt with according to law.

Given at in the said county, under my hand and seal, the day of in the year of our Lord

SLAVES.

State of North Carolina, Wake County.

Form of Outlawry.

By A B. and C D, Esquires, two of the Justices of the Peace in and for the said County.

Whereas complaint upon oath hath this day been made to us, two of the Justices of the Peace of the said county, by C D, of the said county, planter, that a certain male slave belonging to him, named , hath absented himself from his said master's service, and is lurking about in the county, committing acts of felony and other misdeeds: These are therefore in the name of the state, to command the said slave forthwith to surrender himself and return home to his said master; and we do hereby also require the Sheriff of the said county of , to make diligent search and pursuit after the said slave, and him having found, to apprehend and secure so that he may be conveyed to his said master, or otherwise discharged as the law directs: and the said Sheriff is hereby authorised and empowered, to raise and take with him such power of his county as he shall think fit for apprehending the said slave. And we do hereby by virtue of the act of Assembly in such case provided, intimate and declare, that if the said slave, named , doth not surrender himself and return home immediately after the publication of these presents, that any person may kill and destroy the said slave, by such means as he or they may think fit, without accusation or impeachment of any crime or offence for so doing, and without incurring any penalty and forfeiture thereby.

Given under our hands and seals, the day of in the year of our Lord

A B.....(seal)
C D.....(seal)

Warrant for entertaining a Slave.

To E F. Constable, or any other lawful officer to execute.

Whereas B C, hath complained before me, C D, one of the Justices of the Peace for the said county, that a certain negro slave, named belonging to , was found on board the vessel named the whereof is master, lying in the river, creek, bay or harbour of between sunset of the day of and sun rise of the next day, not having any pass from his master or mistress, nor any Justice of the Peace, expressing the time when and the business for which he went on board, whereby the said , master of the said vessel, hath become liable upon conviction to a fine of five pounds: These are therefore to command you to take the body of the said , and bring him before me or some other Justice of the Peace for the said county, on or before the expiration of thirty days (Sundays excepted) from the date of this warrant, to answer the complaint aforesaid, and to be dealt with concerning the premises as the law directs.

Given under my hand and seal, at in the said county, the day of in the year of our Lord

C D.....(seal)

Conviction upon the foregoing Warrant.

The State, vs.

Wake County.

Be it remembered, that on the day of in the year of our Lord in the said county, B C came before us, B B and C C,

two of the Justices of the Peace in and for the county aforesaid, and gave information to us, that a certain negro slave, named , belonging to , was found on board the vessel named , whereof is master, lying in the river , opposite the town of , between sun set of the day of this present month , and sun rise of the next day, against the form of the act of Assembly in such case made and provided; and afterwards, to wit, on the day of in the year of our Lord , at , in the said county, one A A, planter, being a credible witness, in his proper person came before us, and now makes his corporal oath on the Holy Evangelists of God, to speak the truth, the whole truth, and nothing but the truth, of and concerning the premises in the information aforesaid specified before us the said Justices, having sufficient power and authority to administer the said oath to the said A A in this behalf; and the said A A being sworn upon his oath aforesaid, now saith, deposeth and sweareth, that he the said A A on the night of the day of this present month , did see the said negro slave, named , who belongs to, and did then belong to , on board the vessel called the , whereof is, and then was, master, then and now lying in river, opposite the town of , between sun-set of the said day of instant, and sun-rise of the next day, he the said slave named , not then having a pass from his master or mistress, nor from any Justice of the Peace, expressing the time when and the business for which he went on board.

Whereupon the said , after a precept made for that purpose, having been arrested and brought before us to answer the premises, on the same day of in the year of our Lord , at aforesaid, in the county aforesaid, by reason of the information aforesaid, appeared in his proper person before us, the said B B and C C, then Justices of the Peace in and for the said county, and the said information and the evidence thereupon being heard and fully understood by him the said he the said is asked by us the said Justices, if he hath or knoweth any thing to say for himself, why he the said should not be convicted of the premises aforesaid, above laid to his charge in form aforesaid. And because we having heard and fully understood all and every thing alleged by him the said , in his defence of and concerning the premises, it manifestly appears to us the said Justices, that the said is guilty of the premises aforesaid in the said information laid to his charge, in manner and form as in the said information above in that behalf is alleged.

Therefore it is considered by the said Justices, that the said by testimony of the said A A, a credible witness, upon his oath before us the said Justices made as aforesaid, is convicted of the premises above laid to his charge, as set forth by the said information, according to the form of the act of Assembly in such case made and provided; and according to the power and authority given by the said act, we the said Justices have ordered and appointed, and do hereby order and appoint, that the said , on or upon the day of this instant month, do pay a fine of five pounds to A B one of the Constables of this county, for entertainment of such slave as aforesaid, to be applied one half to the use of the said B C, the informant, and the other half to the use of the patrollers of district No. in the said county; and in default of payment thereof, the said , to be further proceeded against according to the laws of this State.

Given under our hands and seals, the day of in the year of our Lord

B B. .....(seal)
C C. .....(seal)

The form for a free negro or mulatto entertaining a slave on the Sabbath day, or in the night between sun-set and sun-rise, are so nearly like the foregoing, that it is presumed they can with ease be made out from it.

Warrant for Harboring or Concealing a Slave.

To A B, Constable, or any other lawful officer to execute.

Whereas B C hath complained upon oath before me C D, one of the Justices of the Peace of and for the said county, that a certain negro slave named , belonging to him the said B C, hath for several weeks now last past, been absent and withdrawn from the service of him the said B C, and that the said B C hath probable cause to suspect, and doth suspect, that F G, planter, of in the county aforesaid hath tempted and persuaded the said slave to leave the service of his said master, out of an intent and design to carry him the said slave out of this state: [or thus, doth harbor and conceal the said slave, for the intent and purpose of carrying the said slave out of this State.] These are therefore to command y u to take the body of the said F G, and bring him before some two Justices of the Peace for the said county to be examined touching the premises, and to be otherwise dea.t with according to law.

Given under my hand and seal the day of in the year of our Lord C D.....(seal)

Warrant for Stealing a Slave.

State of North-Carolina, Wake County.

To A B, Constable, or some other lawful officer to execute.

Forasmuch as B C, planter, hath complained on oath before me, C D, one of the Justices of the Peace for the said county, that a certain negro slave named belonging to him the said B C, is absent and withdrawn from the service of him the said B C, and that he hath great reason to suspect and doth suspect, that a certain G H, late of this county, labourer, hath feloniously stolen the said slave; [or thus, hath feloniously by violence taken and carried away the said slave, with intention to sell and dispose of the said slave to some other person: or thus, hath by seduction or other such unjust means, taken and carried away the said slave with an intention to sell and dispose of the said slave to some other person, or to appropriate the said slave to his own use] These are therefore to command you to make diligent search and inquiry for the said G H, and him having found, to bring before me or some other Justice of the Peace, for the said county, to be examined touching the premises, and to be otherwise dealt with as the law directs.

Given under my hand and seal the day of , in the year of our Lord , C. D..... (seal)

Warrant for carrying away a free Negro with intent to sell him.

State of North-Carolina, Wake County.

To A B, Constable, or some other lawful officer to execute.

Forasmuch as B C hath complained on oath to me, C D, one of the Justices of the Peace for the said county, that D E, a free negro, late of this county, hath disappeared ever since the day of last past, and that he hath great reason to suspect, and doth suspect, that E F, late of this county, labourer, hath feloniously taken and conveyed the said D E, out of this state into some other state, with an intention to sell or dispose of the said D E as a slave: These are therefore to command you to make diligent search and enquiry for the said E F, and him having found, to

bring before me, or some other Justice of the Peace of and for the said county, to be examined touching the premises, and to be otherwise dealt with as the laws of this state do direct.

Given under my hand and seal, the day of , in the year of our Lord

For the form of the Examination and Mittimus,—See EXAMINATION—COMMITMENT.

SUPERSEDEAS, see *Behaviour.*

SUBPOENA.

Form of a Subpœna for Evidences.

State of North Carolina, Wake County.

To the Sheriff of Wake County, greeting.

We command you to summons personally to be and appear before the Justices of our court of pleas and quarter sessions, to be held for the county of at the court-house in on the day of next, then and there to testify, and the truth to say, on behalf of in a certain matter of controversy in our said court depending, and then and there to be tried, between plaintiff, and defendant. And this he shall in no wise omit, under the penalty of pounds, current money. Witness , Clerk of our said court, at the day of in the year of our Lord

VAGRANTS.

(Warrant against.)

State of North-Carolina, Wake County.

To A. B. Constable, or any other lawful officer to execute.

Forasmuch as B C, of this county, planter, hath made affirmation or oath before me, C D, one of the Justices of the Peace of and for the said county, that D E is a person who has no apparent means of subsistence, and neglects applying himself to any honest calling, and is now seen lurking about within the limits of this county, endeavouring to maintain himself by gaming or other undue means; These are therefore to command you to bring the said D E, before me or some other Justice of the Peace for the said county, to be examined touching the premises, and to be otherwise dealt with as the law directs.

Given under my hand and seal the day of in the year of our Lord C D.....(seal)

Mittimus for want of Security for Good Behaviour.

State of North-Carolina, Wake County.

C D, one of the Justices of the Peace of and for the said County.

To the Keeper of the Common Jail of the said County, greeting:

Whereas D E, hath been complained against by B C, as a person who hath no apparent means of subsistence, and who neglects applying him-

self to any honest calling, and who saunters about and endeavors to maintain himself by gaming or other undue means; and thereupon the said D E hath been brought before me, and hath been examined, and proofs heard by and before me concerning the premises; and upon such proofs, I the said Justice have been convinced of the truth of the said charge, and have required the said D E to provide and produce sureties for his good behaviour; and he the said D E hath refused and neglected to produce the same: These are therefore to command you to receive into your said gaol the said D E, for the crime aforesaid, there to remain for the space of ten days, at which time the said D E is to be set at liberty, he paying all charges arising from his said confinement.

Given under my hand and seal the day of in the year of our Lord

C D.....(seal).

WILL.

(Form of.)

In the name of God, Amen. I, A B, of , being of sound and perfect mind and memory (blessed be God) do, this day of in the year of our Lord , make and publish this my last will and testament, in manner following, that is to say,

First, I give and bequeath, &c.

And I hereby make and ordain my worthy friend, C D, executor of this my last will and testament. In witness whereof, I the said A B have to this my last will and tenement, set my hand and seal, the day and year above written.

A B.

Signed, sealed, published and declared, by the said A B, the testator, as his last will and testament, in the presence of us, who were present at the time of signing and sealing thereof.

E F,
G H,
I K.

Codicil,

I, A B, of, &c. do make this codicil to be taken as part of my last will and testament, as follows, that is to say. Whereas I have by my said will given to my sons W B and S B, the sum of each, for mourning; Now I do hereby revoke and make void the said legacies to my sons; and I do hereby give and bequeath unto my said son W B, the sum of , over and above the sum of , which I have given him by my said will. In witness whereof I have to this codicil annexed to my said will, set my hand and seal the day of, &c.

Another Form.

I, A B, of, &c. do this day of, &c. make and publish this codicil to my last will and testament in manner following, that is to say. I give to my niece, M S, one gold watch and one silver coffee pot. And whereas in and by my last will and testament I have given and bequeathed to my daughter-in-law the sum of , I do hereby order and declare that my will is, that only the sum of be paid unto her, in full of the said legacy I have as aforesaid given and bequeathed unto her, and that the

remaining part of the said legacy be given and paid to my nephew E H And lastly it is my desire that this my present codicil be annexed to, and made a part of my last will and testament to all intents and purposes. In witness, &c.

The following Article of Amendment to the Constitution of the United States, is omitted in its proper place; hence the insertion here:

ADDITIONAL AMENDMENT.

If any citizen of the United States shall accept, claim, receive, or retain any title of nobility or honor, or shall, without the consent of Congress, accept and retain any present, pension, office, or emolument of any kind whatever, from any Emperor, King, Prince, or Foreign Power, such person shall cease to be a citizen of the United States, and shall be incapable of holding any office of trust or profit under them, or either of them.

[NOTE.—This article was proposed at the Second Session of the Eleventh Congress.]

FINIS.

John Perdue

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The office and duty of a justi
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